Twin Falls City Council
Agenda

Monday, January 6, 2025, 5:00 PM

Council Chambers
203 Main Avenue East Twin Falls, Idaho

Members: Mayor Ruth Pierce, Vice Mayor Jason Brown, Council Members Craig Hawkins, Spencer Cutler, Christopher Reid, Grayson Stone, Cherie Vollmer

1) Call Meeting to Order/Confirmation of Quorum

2) Pledge of Allegiance

3) Consent Calendar
   a) **ACTION ITEM:** Request to approve the minutes for City Council Meeting 23 December 2024 By: Amy Luna, Deputy City Clerk
   b) **ACTION ITEM:** Request to authorize the mayor to sign a concession agreement renewal with Avis car rental.
      By: Bill Carberry, Airport Manager
   c) **ACTION ITEM:** Request to authorize the mayor to sign a concession agreement renewal with Budget car rental.
      By: Bill Carberry, Airport Manager
   d) **ACTION ITEM:** Request to authorize the mayor to sign a concession agreement renewal with Enterprise car rental.
      By: Bill Carberry, Airport Manager
   e) **ACTION ITEM:** Request to authorize the mayor to sign a car wash service area agreement renewal with Avis/Budget car rental.
      By: Bill Carberry, Airport Manager
   f) **ACTION ITEM:** Request to authorize the mayor to sign a car wash service area agreement renewal with Enterprise car rental.
      By: Bill Carberry, Airport Manager
   g) **ACTION ITEM:** Request to authorize the mayor to sign an airport restaurant agreement renewal with Happy's Restaurant, L.L.C.
      By: Bill Carberry, Airport Manager
   h) **ACTION ITEM:** Request City Council to approve the Special Event Permit for the organizers of the Annual Vietnam War Veterans Commemoration event.
      By: Lou Coronado, Sergeant, Twin Falls Police Department
   i) **ACTION ITEM:** Summer Reading Finale Street Dance
      By: Lou Coronado, Sergeant, Twin Falls Police Department

4) Items of Consideration

5) General Public Input

6) Advisory Board Report/Announcements

7) Public Hearings
   a) **ACTION ITEM:** Request to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia nutritional (PZ24-0123).
      By: Kelli Ebersole, City Planner
   b) **ACTION ITEM:** Request to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).
      By: William Klaver, Senior City Planner
   c) **ACTION ITEM:** Request to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls(PZ24-0102)
      By: William Klaver, Senior City Planner

8) Adjournment

Any person(s) needing special accommodations to participate in the above-noticed meeting could contact Josh Palmer (208) 735-7312 at least two working days before the meeting. Si desea esta información en Español, por favor llame a Josh Palmer al teléfono (208) 735-7312

Public Input Procedures

1. Individuals wishing to provide public input regarding matters relevant to the City of Twin falls shall:
    a. Wait to be recognized by the Mayor or Chairman.
    b. Approach the microphone/podium.
    c. State their name, and whether they are a resident or property owner of the City of Twin Falls and proceed with their input.
2. All public input will be limited to two (2) minutes. Individuals are not permitted to give their time to other speakers.
3. All presenters shall remain respectful.

Public input will not be about any of the items that were on this agenda, personnel, or a personnel-related issue. All issues involving City personnel should be directly communicated with the mayor and/or the City Manager.

Anyone failing to follow these rules will be provided with one (1) warning. Should the speaker continue to disregard these rules after the warning, will have the microphone muted and they will be asked to return to their seats.

Public Hearing Procedures for Zoning Requests

1. Prior to opening the first Public Hearing of the session, the Mayor or Chairman shall review the public hearing procedures.
2. Individuals wishing to testify or speak before the City Council or Planning & Zoning Commission shall wait to be recognized by the Mayor or Chairman, approach the microphone/podium, state their name, and then proceed with their comments. Following their statements, they shall write their name and address on the record sheet(s) provided by the staff. The staff shall make an audio recording of the Public Hearing.
3. A City Staff Report shall summarize the application and history of the request.
4. The Applicant, or the spokesperson for the Applicant, will make a presentation on the application/request (request). No changes to the request may be made by the applicant after the publication of the Notice of Public Hearing. The presentation should include the following:
    - A complete explanation and description of the request.
    - Why the request is being made.
    - Location of the Property.
    - Impacts on the surrounding properties and efforts to mitigate those impacts.
5. Applicant is limited to 15 minutes, unless a written request for additional time is received, at least 72 hours prior to the hearing, and granted by the Mayor or Chairman.
6. The City Council or Planning & Zoning Commission may ask questions of staff or the applicant pertaining to the request.
7. The general public will then be given the opportunity to provide their testimony regarding the request. The Mayor or Chairman may limit public testimony to no less than two (2) minutes per person.
    - Individuals are not permitted to give their time to other speakers.
    - However, five (5) or more individuals that received written notice of the public hearing may appoint, by written petition, a spokesperson. The written petition must be received at least 72 hours prior to the hearing and must be granted by the Mayor or Chairman. The spokesperson shall be limited to 15 minutes.
    - Written comments, including e-mail, received by 12:00 p.m. on the date of the hearing shall be either read into the record or displayed to the public on the overhead projector.
8. Following the Public Testimony, the applicant is permitted five (5) minutes to respond to Public Testimony.
9. Following the Public Testimony and Applicant's response, Council or Commission members, as recognized by the Mayor or Chairman, shall be allowed to question the Applicant, Staff or anyone who has testified. Responses shall be limited to answering the questions asked. The Mayor or Chairman may limit the time permitted for the answer.
10. The Mayor or Chairman shall close the Public Hearing. The City Council or Planning & Zoning Commission shall deliberate on the request. Deliberations and decisions shall be based upon the information and testimony provided during the Public Hearing. Once the Public Hearing is closed, additional testimony from the staff, applicant or public is not allowed. Legal or procedural questions may be directed to the City Attorney.

* Any person not conforming to the above rules may be prohibited from speaking. Persons refusing to comply with such prohibitions may be asked to leave the hearing and, thereafter removed from the room by order of the Mayor or Chairman

Twin Falls City Council
Minutes

Monday, December 23, 2024, 5:00 PM

Council Chambers
203 Main Avenue East Twin Falls, Idaho

1) CALL MEETING TO ORDER/CONFIRMATION OF QUORUM

Present: Mayor Ruth Pierce, Vice Mayor Jason Brown, Council Members Craig Hawkins, Christopher Reid, Spencer Cutler, Cherie Vollmer & Grayson Stone.

Staff Present: City Manager Travis Rothweiler, Deputy City Managers Gretchen Scott, City Attorney Bruce Castleton (via teams), Transit Coordinator Maxine Durand, Planning & Zoning Director Jonathan Spendlove, City Planner Kelli Ebersole, Deputy City Clerk Amy Luna.

Mayor Pierce called the meeting to order at 5:00 PM. A quorum was present.

2) PLEDGE OF ALLEGIANCE

Mayor Pierce invited all present, who wished, to recite the Pledge of Allegiance to the Flag.

3) CONSENT CALENDAR

MOTION: Council Member Reid moved to approve the Consent Calendar as presented. **Vice Mayor Brown** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

a) Request to approve the minutes for City Council Meeting 16 December 2024
b) Request to approve Accounts Payable for December 12-18, 2024.
c) Request to approve 2024 November Wells Fargo Credit Card Summary.
d) Request to approve December 18, 2024, Travel Requests.
e) Request for approval of Findings of Facts and Conclusions of Law for the following:
Annexation on Diamond Avenue PZ24-0097
Annexation of Pole Line Rd W PZ24-0103
f) Request for approval of Final Plat for Jack's 612 Subdivision consisting of 4 lots on 0.475 (+/-) acres located at 612 Jackson St. c/o Jeremy Orton (PZ24-0151).
g) Request to accept the Improvement Agreement for the purpose of developing Jack's 612 Subdivision.

4) ITEMS OF CONSIDERATION

a) Request to approve the purchase of a Versalift VST-55-HDI telescopic lift and 2024 Ford F600 truck at a cost of $301,349.00 using a cooperative purchasing agreement with Sourcewell and authorize the IT Director to execute the contract.

Deputy City Manager Scott requested to approve the purchase of a Versalift VST-55-HDI telescopic lift and 2024 Ford F600 truck at a cost of $301,349.00 using a cooperative purchasing agreement with Sourcewell and authorize the IT Director to execute the contract.

Discussion ensued on the following:
Council Member Cutler: Asked for clarification on the department shown.

MOTION: Vice Mayor Brown moved to approve the request to approve the purchase of a Versalift VST-55-HDI telescopic lift and 2024 Ford F600 truck at a cost of $301,349.00 using a cooperative purchasing agreement with Sourcewell and authorize the IT Director to execute the contract. **Council Member Stone** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

b) Request to approve Transit Improvement Plan for submission to Magic Valley MPO

Transit Coordinator Durand Request to approve Transit Improvement Plan for submission to Magic Valley MPO.

Discussion ensued on the following:
Mayor Pierce: Asked for clarification.
Council Member Cutler: Spoke on the process.

MOTION: Council Member Reid moved to approve Transit Improvement Plan for submission to Magic Valley MPO**. Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

c) Request to adopt Resolution R-2024-012 - Resolution Authorizing the Filing of Applications with the Federal Transit Administration, an Operating Administration of the United States Department of Transportation, for Federal Transportation Assistance Authorized by Chapter 53 of Title 49 of the United States Code and Any Other Federal Statutes Administered by the Federal Transit Administration.

Transit Coordinator Maxine Durand Request to adopt ***Resolution R-2024-012*** - Resolution Authorizing the Filing of Applications with the Federal Transit Administration, an Operating Administration of the United States Department of Transportation, for Federal Transportation Assistance Authorized by Chapter 53 of Title 49 of the United States Code and Any Other Federal Statutes Administered by the Federal Transit Administration.

Discussion ensued on the following: None.

MOTION: Council Member Stone moved to approve the request to adopt ***Resolution R-2024- 012*** - Resolution Authorizing the Filing of Applications with the Federal Transit Administration, an Operating Administration of the United States Department of Transportation, for Federal Transportation Assistance Authorized by Chapter 53 of Title 49 of the United States Code and Any Other Federal Statutes Administered by the Federal Transit Administration. **Council Member Hawkins** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

d) Request to adopt ordinance #O-2024-022 for Zoning District Change on property located on the south side of the 1900 block of 4th Avenue East.

P&Z Director Spendlove Request to adopt ***Ordinance #O-2024-022*** for Zoning District Change on property located on the south side of the 1900 block of 4th Avenue East.

MOTION: Council Member Reid made a motion to dispense with reading the rules and put ***Ordinance #O-2024-022*** on third and final reading by title only. **Council Member Vollmer** seconded the motion. The Roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

Mayor Pierce read ***Ordinance #2024-022*** by title only.

MOTION: Council Member Reid moved to approve the request to adopt ***Ordinance #O-2024- 022*** for Zoning District Change on property located on the south side of the 1900 block of 4th Avenue East**. Vice Mayor Brown** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

e) Request to adopt ordinance #O-2024-023 for Zoning District Change on property located on the 2000 and 2100 block of Pole Line Rd East (Entirety of Pillar Falls Plaza Subdivision).

P&Z Director Spendlove Request to adopt ***Ordinance #O-2024-023*** for Zoning District Change on property located on the 2000 and 2100 block of Pole Line Rd East (Entirety of Pillar Falls Plaza Subdivision).

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Mayor Pierce read ***Ordinance #O-2024-023*** by title only.

MOTION: Vice Mayor Brown moved to approve the request to adopt ***Ordinance #O-2024-023*** for Zoning District Change on property located on the 2000 and 2100 block of Pole Line Rd East (Entirety of Pillar Falls Plaza Subdivision**). Council Member Stone** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

f) Request to adopt ordinance #O-2024-024 for Annexation on property located east of Sunway Dr N from North College Rd W to Pole Line Rd W.

Planning and Zoning Director Spendlove Request to adopt ***Ordinance #O-2024-024*** for Annexation on property located east of Sunway Dr N from North College Rd W to Pole Line Rd W.

MOTION: Vice Mayor Brown made a motion to dispense with reading the rules and put ***Ordinance #O-2024-024*** on third and final reading by title only. **Council Member Reid** seconded the motion. The Roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

Mayor Pierce read ***Ordinance #O-2024-024*** by title only.

MOTION: Council Member Vollmer moved to approve the request to adopt ***Ordinance #O- 2024-024*** for Annexation on property located east of Sunway Dr N from North College Rd W to Pole Line Rd W. **Council Member Hawkinks** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

5) GENERAL PUBLIC INPUT

6) ADVISORY BOARD REPORT/ANNOUNCEMENTS

City Manager Rottweiler reminded all that the city offices will be closed on December 24th & 25th, 2024 as well as January 1st, 2025.

7) PUBLIC HEARINGS

a) Request for a zoning District Change from R-2 PUD to R-2 for approximately 68 acres located South of South Hills Rd and East of Harrison St S. c/o Tim Vawser on behalf of Sundance Partners, LLC (PZ24-0112).

City Planner Ebersole Request for a zoning District Change from R-2 PUD to R-2 for approximately 68 acres located South of South Hills Rd and East of Harrison St S. c/o Tim Tiebo on behalf of Sundance Partners, LLC (PZ24-0112).

The applicant's representative spoke on the request.

Public Hearing Opened: 5:36 pm
Citizen Darren ??? Spoke against this request.
The applicants representative spoke addressed the citizen's comment.
Public Hearing Closed: 5:41 pm

Discussion ensued on the following:
Council Member Stone: Asked for clarification on the retainage of the 10,000 square feet requirement.
Council Member Reid: Asked for someone to address the traffic issue that was brought up.
P&Z Director Spendlove: Addressed the question.
Mayor Pierce: gave some clarification.

MOTION: Vice Mayor Brown moved to approve the request for a zoning District Change from R-2 PUD to R-2 for approximately 68 acres located South of South Hills Rd and East of Harrison St S. c/o Tim Tiebo on behalf of Sundance Partners, LLC (PZ24-0112). **Council Member Cutler** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

b) Request for a Zoning District Change from C-1 PUD to C-1 on property located at 182, 212, and 228 Blue Lakes Blvd N. c/o EHM Engineers, Inc on behalf of Chasewood, LLC (PZ24-0113).

P&Z Director Spendlove Request for a Zoning District Change from C-1 PUD to C-1 on property located at 182, 212, and 228 Blue Lakes Blvd N. c/o EHM Engineers, Inc on behalf of Chasewood, LLC (PZ24-0113).

The applicant's representative spoke on the request.

Public Hearing Opened: 5:50 pm
Public Hearing Closed: 5:51 pm

Discussion ensued on the following:
Council Member Hawkins: Spoke in favor of this request.

MOTION: Council Member Reid moved to approve the Request for a Zoning District Change from C-1

PUD to C-1 on property located at 182, 212, and 228 Blue Lakes Blvd N. c/o EHM Engineers, Inc on behalf of Chasewood, LLC (PZ24-0113)**. Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

8) ADJOURNMENT

The meeting adjourned at 05:52 PM

_____

Amy Luna, Deputy City Clerk

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8) ADJOURNMENT

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_____

Amy Luna, Deputy City Clerk

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Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request:

Consideration of a request to authorize the mayor to sign a concession agreement renewal with Avis car rental.

Background:

The airport's car rental businesses are due for a 5-year renewal of their concession agreements this year. Other than the recent departure of Hertz car rental in 2024, the airport has had a steady relationship with the incumbent car rental businesses (Avis, Budget, Enterprise, National). In recent years, we've seen changes in commercial ground transportation to include the rollout of Uber/Lyft and other transportation providers to include our own Twin Falls Transit operation. However, being a regional airport servicing the Magic Valley area, we still see an important role for the rental car industry at the airport.

Approval Process:

A majority vote of the City Council is needed to approve the request.

Budget Impact:

The approval will allow for the airport to renew the car rental concession agreement and receive rental payments for the counter area and a 10% of gross sales concession fee from the car rental company.

Regulatory Impact:

The airport's lease agreements are prepared by the City Attorney and terms of the agreement are wide ranging in the requirements to protect the interests of both parties. The agreements are also subordinate to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion:

Staff recommends the City Council approve the request to authorize the mayor to sign a concession agreement renewal with Avis car rental.

Attachments: Avis car rental agreement

AUTOMOBILE CONCESSION AGREEMENT
AVIS-RENT-A-CAR SYSTEM, INC

THIS AUTOMOBILE CONCESSION AGREEMENT is made and entered into effective the 1st day of October 2024, by and between the **CITY OF TWIN FALLS, IDAHO**, hereinafter called "Owner", and **AVIS- RENT- A- CAR- SYSTEM**, **INC** hereinafter called "Concessionaire."

1. Description of Property. In consideration for the rental specified below, Owner hereby leases to Concessionaire the below-described property at the Joslin Field-Magic Valley Regional Airport ("Airport"), hereinafter called the "Premises," for its exclusive use:

(a) One hundred (160) square feet of counter area and office area as shown on Exhibit "A" attached hereto and made a part hereof and labeled.

(b) Ten (10) ready car area spaces as shown on Exhibit "B" attached.. The Owners agree to restrict the use of such spaces to Concessionaire through signs provided by Concessionaire.

2. Term of Agreement. The term of this Agreement shall commence on October 1, 2024, and end on September 30, 2029.

3. Holding Over. The holding over or failure to vacate the premises at the expiration of this Agreement shall create a month-to-month tenancy upon the terms and conditions contained herein and may be terminated by either party upon thirty (30) days prior written notice to the other party.

4. Use of Premises. Owner grants Concessionaire the right to conduct and operate an automobile rental concession at the Premises. Such right and the use of the Premises described herein are granted for the purpose of providing automobile rental service at the Airport and for the purpose of arranging for such services for the public using the Airport at destinations where automobile rental service is furnished by Concessionaire or by members of Concessionaire's system. Concessionaire shall also have the right to offer, in connection with its automobile rental business, Personal Accident Insurance to its customers. No maintenance or servicing of any vehicles shall be performed in the area referenced in paragraph 1(b), or on airport property. Concessionaire is prohibited from transacting rental car business at any other point on the Airport unless written permission is obtained from Owner, which permission, if given, shall require strict compliance with all provisions of this Agreement.

(a) Multiple Brands. Dual branding, offering car rentals to customers from two nationally recognized car rental brands, will be allowed during the term of this Agreement; however, a single concessionaire may not offer rentals from more than two nationally recognized franchises.

5. Concession is Non-Exclusive. The concession granted herein is a non-exclusive concession and the Owner shall have the right to enter into automobile concession agreements with other firms, individuals or corporations, provided, however, that in any such agreement the concession fee and minimum annual guarantee shall not be less than that provided for in this Agreement. The Owner shall also have the right to enter off-premises use and permit agreements.

6. Concession Fees and Property Rent. (a) Concessionaire agrees to pay Owner, for the rights and privileges granted herein, a monthly concession fee of ten percent (10%) of Concessionaire's gross revenue, hereinafter defined. However, in no event shall the total annual

concessions fee under this Agreement be less than the guaranteed sum of Twenty-Five Thousand and no/l00th Dollars ($25,000.00).

(b) The Concessionaire further agrees to pay the following rent for property described in paragraph 1:

(1) One hundred (160) square feet of counter area and office area as shown on Exhibit "A" attached hereto and labeled.

Rental for the counter area for the period October 1, 2024, through September 30, 2029, shall be at the rate of $18.47 per square foot for an annual rent of $2,955.20, due October 1, 2024.

(2) Ten (10) ready car area parking spaces as shown on Exhibit "B" attached hereto and made a part hereof and labeled..

Rental for the ten (10) ready car area parking spaces allocated to Lessee as rental parking will be $20.00 per space monthly for an annual rent of $2,400.00, due October 1, 2024.

(c) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2024 shall be $18.47 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2024 is calculated as follows:

Annual CPI-U Index for 2023		304.702
Less Annual CPI-U Index for 2022		292.655
Change in Annual Index		12.047
Divided by Annual Index for 2022	292.655	
Equals		0.041
Which is a percentage change of		4.1%
Prior rent (effective 10/1/2023)		17.74
Plus, current percentage change	4.1%	0.727
New rent (effective 10/1/2024)		**$18.467**
160 Sq. Ft x $18.47 Annually		**$2,955.20**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased.; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent

increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

If the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

(d) Concessionaire shall furnish the Owner on or before the 20th business day of each month a certified statement of gross revenues for the immediately preceding month and shall pay the amount equal to 10 % of such gross revenue. If the foregoing amount is not paid within thirty (30) days after the same shall become due, said amount shall bear interest at the rate of twelve (12) per cent per annum.

(e) Annual Audit- Within ninety (90) days after December 31 of each year during the term hereof, Concessionaire shall furnish to the Owner a statement of Concessionaire's gross revenue, certified by a Certified Public Accountant and an appropriate corporate officer of the Concessionaire, and shall simultaneously pay to the Owner the amount, if any, due to the Owner hereunder for such preceding calendar year or part thereof over and above the amount theretofore paid to include Property Rent, a Concession fees of 10% of Gross Revenue with a the Minimum Calendar Year Annual Guarantee of $25,000.00. If Concessionaire has paid Owner during the preceding year an amount in excess of that due under 6(a) above, the Owner shall credit Concessionaire for such excess against future payments.

(f) The Owner shall have the right at any time to have an audit prepared by an independent Certified Public Accountant. In the event there is a discrepancy of gross revenues between Concessionaire's annual statement and said independent audit, Concessionaire shall bear the cost of said independent audit.

(g) “Gross Revenue” as used herein shall mean, as determined in the reasonable discretion of the Owner, all amounts charged by Operator to its customers for or in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenue shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made, goods provided and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons or entities through Operator’s operations at the Airport, without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location. Gross Revenue shall include anything and everything that is not specifically excluded herein. The only exclusions from Gross Revenue permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;
2. Amounts received as insurance proceeds for loss of, or damages to, vehicles or other property of Operator;

3. Amounts received from the sale of vehicles off- Airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals, or other products or services provided to persons through Operator's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenue; and,
4. Reimbursements for amounts actually paid to third parties for towing, parking tickets and windshield replacement.

Concessionaire shall not cause or allow any of its automobile rental business generated at the Airport to be diverted to any other location or in any manner to avoid or reduce its gross revenue on which the percentage fee is computed.

7. Abatement of Rent. In the event that one of the following conditions exists during the term hereof, a commensurate percentage of the minimum annual guarantee provided for herein shall be abated for the period the condition continues to exist:

(a) If the operation of Concessionaire's car rental business becomes impractical, unprofitable or impossible because of shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, which persist for at least thirty (30) days;

(b) If the Airport is closed by Owner for the purpose of construction for any period of twenty-one (21) consecutive days or more in any calendar month, the minimum annual guarantee shall be abated that month.

Notwithstanding, Concessionaire will pay to the Owner ten percent (10%) of its gross revenues during the period the condition continues to exist. The Owner shall return to Concessionaire a just proportion of any minimum guaranteed payment that may have been paid in advance for a month or portion thereof which falls within the period of abatement.

8. Telephone Service. Owner agrees to provide Concessionaire with access and use of the terminal telephone system at its Premises. Owner shall provide Concessionaire with one terminal system telephone and shall maintain the terminal telephone system and the system telephone at their sole cost and expense. **Concessionaire agrees that it shall pay Owner $75.00 per month for this telephone service.**

9. Utilities. During the term of this Lease, Owner agrees to pay for all water, gas, and electricity used in or about said Premises and Airport-related facilities.

(a) **Communication and Equipment.** Lessee agrees to provide and pay for its own communication facilities and equipment and Lessee agrees that the facilities to be provided by Airport hereunder are for the purpose of providing automobile rental services. Lessee's communication facilities and equipment shall not, in any respect, interfere with communication equipment used by the Airport, airlines, TSA or other aviation related users. Lessee agrees to, at its own expense, resolve any interference between its communication equipment and any used by the Airport, airlines, TSA or other aviation related users.

10. Alterations and Improvements. During the term hereof Concessionaire shall have the right, at Concessionaire's sole expense, to alter existing improvements or erect new or additional improvements on the Premises as may be required in connection with

Concessionaire's operations hereunder, and to install therein and thereon such equipment and facilities as Concessionaire may deem necessary or desirable, provided, however, that no such alterations or improvements shall be made or installed by Concessionaire without the prior written consent of the Owner. Concessionaire further agrees that prior to the alteration or installation of or making of any such improvement, it shall submit the general plan, location, design and character thereof to the Owner for approval, and the City for zoning approval and building permits.

11. Signs. Concessionaire, after first obtaining Airport Manager approval, may install, and thereafter operate and maintain, at its sole expense, illuminating and non-illuminating signs advertising Concessionaire's business on the Premises, and at such other place or places in or upon the Airport as may be mutually agreed upon in advance by the parties hereto.

12. Concessionaire's Business Operations. Concessionaire hereby covenants and agrees:

(a) To furnish good, prompt and efficient service, adequate to meet all reasonable demands for automobile rental service at the Airport, on a fair and reasonable basis, and to charge prices for such services in accordance with its usual standards, on a basis substantially similar to that charged by it for similar services at airports of comparable size within the same general area.

(b) That rental automobiles made available hereunder shall be no more than two model years old and shall be maintained at Concessionaire's sole expense, in good operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.

(c) That the facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental service shall remain open for such periods during each day and such days during each week as may be necessary to meet reasonable demands for said services. Lessee agrees to meet all scheduled airline arriving flights at the Airport during the daily hours of 9:00 a.m.-11:45 p.m. (d) That personnel performing services hereunder shall be neat, clean and courteous, and Concessionaire shall not permit its agents, servants, or employees so engaged to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the space assigned in any manner whatsoever except through the use of signs constructed and maintained in accordance with this Agreement.

(e) That it shall abide by and be subject to all rules and regulations which are now or may from time to time be adopted by Owner concerning management, operation or use of the Airport.

(f) That it will keep or cause to be kept true, accurate and complete records of business conducted hereunder and Concessionaire further agrees that the Owner shall have the right, through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times for the purpose of determining the accuracy thereof and of the reports required to be made by Concessionaire pursuant to Section 6.

(g) That it will meet all expenses in connection with the use of the Premises occupied by it and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Premises or structures and improvements at any time situated thereon, and that it will secure all such permits and licenses.

(h) That it will furnish, install, operate and maintain the concession provided hereunder and keep the same as well as the Premises made available to it and the furniture, fixtures and equipment installed therein and thereon, all in good order, condition and repair, and upon termination of this Agreement will deliver up the said Premises to the Owner in good order, condition and repair, reasonable wear and tear excepted.

(i) It will maintain in good condition and repair the areas leased to it and shall keep said areas clean and neat and not permit accumulation of waste, dirt or debris on the same, and shall be responsible for garbage and trash removal.

(j) Concessionaire shall not sell gasoline, repair services or related services on the Airport; however, Concessionaire may top-off returned rentals and bill customers for such amount as well as any amount necessary for the repair of damage to rentals.

13. Hold Harmless. Concessionaire shall indemnify and hold Owner and the property of the Owner, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Owner's sole negligence or willful misconduct, resulting from Concessionaire's occupation and use of the Premises and related Airport facilities at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Concessionaire's occupation and use of the Premises at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Concessionaire's improvements or personal property in or on the Premises or Airport-related facilities, or the acts or omissions of any person in or on the Premises or Airport-related facilities with the express or implied consent of the Concessionaire including but not limited to the Concessionaire, it's agents, licensees, occupants and users of the Premises. Provided however, Concessionaire shall have no obligation to indemnify and hold Owner harmless for claims, liability, loss, damage or expense directly resulting from Owner's negligence or willful misconduct except by way of liability insurance required in Section 14. Owner shall not be liable for any personal injury or property damage which may be sustained by Concessionaire, it's agents, licensees, occupants and users or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Concessionaire, it's agents, licensees, occupants and users of the Premises, and Concessionaire agrees to indemnify and hold Owner harmless from such liability.

Should Owner be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Concessionaire in connection with or arising out of an event covered by this indemnification provision, Concessionaire shall pay and/or otherwise compensate Owner for Owner's costs and expenses incurred in such suit, action or demand without limitation. The Concessionaire shall give reasonable notice to Owner of any such claims or actions. The Concessionaire shall, in writing, notify Owner of the counsel to be used in carrying out its obligations herein. Owner shall be entitled to object to the use of said counsel and shall give reasonable notice of an objection regarding the use of said counsel. Further, Concessionaire's agreement to indemnify Owner is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Concessionaire pursuant to the provisions of this Agreement. The provisions of the paragraph shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Agreement.

Concessionaire hereby agrees with Owner that Owner shall not be liable for damage to the property of Concessionaire, Concessionaire's employees, agents, licensees, occupants and users, or any other person in or about the Premises at the request, or with the permission of Concessionaire. Further, the parties agree that Owner shall not be liable for any damages arising from any act or neglect of any other tenant of Owner.

14. Liability Insurance. Concessionaire shall maintain at its expense a policy of public liability insurance, covering Concessionaire's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Owner as an additional insured and protecting Owner and Concessionaire against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities relating to or arising out of Concessionaire's occupation and use of the Premises, with limits of at least $2,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Owner not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense**,** subject to policy terms, conditions, limitations and exclusions. With respect to the coverages required in this paragraph, the parties agree that Concessionaire's policy or policies shall be primary to any other valid and collectible insurance available to Owner.

The above-required insurance shall be with an insurance carrier, or insurance carriers, satisfactory to Owner and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Owner. Notice shall only be provided if the insurance company cancels or alters the policy affecting the requirements of Owner. Concessionaire shall provide Owner with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Owner.

Concessionaire shall also, without cost to the Owner, maintain during the term hereof automobile liability insurance in accordance with the terms and conditions of its automobile rental agreements, covering the operation of rental automobiles hereunder. All such general liability insurance and automobile liability insurance shall provide liability limits of not less than $1,000,000.00 on account of personal injury, death or property damage or other loss as a result of any one occurrence or accident, regardless of the number of persons injured or number of claimants. Concessionaire shall provide Owner certificates evidencing all such insurance and containing a provision that the policies cannot be canceled or amended without giving the Owner ten (10) days prior written notice.

15. Concessionaire's Property. All personal property, including trade fixtures, owned or leased by Concessionaire and used upon the Premises, shall be at the risk of Concessionaire.

16. Owner's Right to Terminate. Owner shall have the right to terminate this Agreement upon ten (10) days prior written notice to Concessionaire, upon or after the happening of one or more of the following events:

(a) If Concessionaire shall make a general assignment for the benefit of creditors;

(b) If Concessionaire shall file a voluntary petition in bankruptcy or a petition seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy

laws or under any similar state laws;

(c) If any involuntary petition in bankruptcy shall be filed against Concessionaire and Concessionaire is thereafter adjudicated a bankrupt thereunder;

(d) If Concessionaire shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of the property of Concessionaire;

(e) If Concessionaire shall voluntarily abandon and discontinue its automobile rental service at the Airport for a period of sixty (60) consecutive days, or if Concessionaire shall abandon its Premises in the Airport for a period of sixty (60) days;

(f) If Concessionaire shall fail to pay the rental charges or other money payments required by this Agreement and such failure shall not be remedied within thirty (30) days following receipt by Concessionaire of written demand from the Owner to do so; or,

(g) If Concessionaire shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it hereunder and shall fail to commence with due diligence to remedy the default within thirty (30) days following receipt by Concessionaire of written demand from the Owner to do so.

In the event of termination of this Agreement by the Owner for any of the reasons specified above, Concessionaire shall have thirty (30) days within which to remove all trade fixtures and personal property installed in or upon the premises by Concessionaire.

17. Concessionaire's Right to Terminate. Concessionaire shall have the right to terminate this Agreement upon ten (10) days prior written notice to Owner, upon the happening of one or more of the following events:

(a) The issuance by any court of competent jurisdiction of an injunction, order or decree preventing or restraining the use of the Airport for normal airport purposes or the use of any part thereof which may be used by Concessionaire and which is necessary for Concessionaire's operations on the Airport, or preventing Concessionaire from operating an automobile rental business, which remains in force for a period of at least thirty (30) days;

(b) If the Owner shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Agreement and shall fail to cure said default within thirty (30) days following receipt of written demand from Concessionaire to do so;

(c) If all or a material part of the Airport or Airport facilities shall be destroyed by fire, explosion, earthquake, other casualty, or acts of God or the public enemy;

(d) If the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to interfere materially with Concessionaire's operations for a period of thirty (30) consecutive days or more;

(e) Permanent abandonment of the Airport as an air terminal.

18. Duties Upon Termination. Upon the expiration or earlier termination of this Agreement, Concessionaire shall promptly remove or cause to be removed at Concessionaire's expense from the Premises and the Facility any signs, notices and displays, furniture, trade fixtures and personal property on, installed in or upon the Premises by Concessionaire and surrender the Premises in broom clean, first-class condition, ordinary wear and tear excepted. In default of such removal by Concessionaire, all such property, and every interest of Concessionaire in the same, shall be conclusively presumed to have been conveyed by Concessionaire to Owner under this Agreement as a bill of sale without compensation, allowance or credit to Concessionaire. All Concessionaire's improvements or additions to the Premises that

cannot be removed without damage to the Premises shall be deemed the Owner's property; provided, however, that Owner may elect prior to the termination of the Agreement, or within ten (10) days thereafter, to require Concessionaire to remove any installation or addition at Concessionaire's expense.

19. Licensee May Fulfill Concessionaire's Obligations. The parties agree that any and all obligations of Concessionaire hereunder may be fulfilled or discharged either by Concessionaire or by a licensee member of the Concessionaire, duly appointed thereto by the Concessionaire, and that any and all privileges of every kind granted Concessionaire hereunder may extend to and be enjoyed by such licensee so appointed, provided, however, that notwithstanding the method of operation employed by Concessionaire hereunder, Concessionaire shall continue always to remain directly liable to the Owner for the performance of all terms and conditions of this Agreement. Except as hereinabove set out, the right to occupy the Premises occupied by Concessionaire hereunder may not be sublet, in whole or part, and Concessionaire shall not assign this Agreement, nor permit any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation, without prior written consent of the Owner.

20. Default and Forfeiture. Time and the strict and faithful performance of each and every one of the conditions of this lease is expressly made the essence of this Agreement. If default be made by the Concessionaire in payment of any part of Concessionaire's rent when the same shall become due, or default be made by the Concessionaire in keeping, performing or observing any of the covenants and agreements herein contained and such default shall remain so for a period of thirty (30) days after written notice shall have been sent by certified mail to Concessionaire as hereinafter provided, then in such event the Owner may, at Owner' election, either in law or equity, seek performance of this Lease or may declare said term and lease forfeited and ended and re-enter said demised Premises to repossess and enjoy the same, and the effect of such default shall, at the election of Owner, without further notice or demand, constitute a forfeiture and termination of this lease. If the Concessionaire shall fail to surrender possession of the demised Premises to Owner, the Concessionaire shall be deemed guilty of an unlawful and forcible detention of said Premises. If the property is abandoned by Concessionaire in conjunction with an event of default, then termination shall be automatic and without notice. If Concessionaire shall abandon or vacate said Premises, or if this Lease be terminated for breach of any of the covenants and agreements herein contained, Concessionaire hereby agrees to pay all reasonable expenses incurred by Owner in obtaining possession of said Premises from Concessionaire, including reasonable attorney's fees, and to pay such other expenses as the Owner may incur in putting the Premises in good order and condition as herein provided, normal wear and tear excepted, and also to pay all other reasonable and necessary expenses or commissions paid by Owner in releasing the Premises. In the event of notification of default by Owner to Concessionaire and Concessionaire does in fact cure such default, then and in that event Concessionaire shall pay, in addition to all arrearages existing, all reasonable attorney's fees and costs incurred by Owner in determination of the default and the notification to the defaulting Concessionaire.

If Concessionaire shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any consecutive twelve-month-period during the term hereof, then such conduct shall, at the election of Owner, represent

a separate event of default which cannot be cured by Concessionaire. Concessionaire acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Owner and deprive it of timely performance by Concessionaire hereunder.

21. Condemnation. In case of a taking by eminent domain ("Taking"), other than for temporary use, of either (a) the entire Premises, or (b) such a substantial part of the Premises as shall have the result that the portion of the Premises remaining after such Taking (even if restoration were made) will be economically unsuitable for the use of the Premises for purposes described in Paragraph 4, this Agreement shall terminate as of the date of the transfer of possession to the condemning authority. In the case of a total taking, the entire amount of any condemnation award shall be paid to and retained by Owner, and Concessionaire shall have no right or claim with respect thereto.

In the event of a taking of a portion of the Premises that is not a total taking, then and in that event this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such taking and rent shall be reduced on a square footage basis at the then applicable rental rate provided for in Paragraph 6 of this Agreement. The entire amount of any condemnation award for a taking of a portion of the Premises shall be paid to and be retained by Owner.

Neither the execution of this Lease nor any provision of this Lease shall affect in any way Owner's right to condemn the Premises herein granted under its power of eminent domain.

22. Inconvenience during Construction. Lessee recognizes that from time to time during the term of this Lease it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconveniences or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from Lessor's negligence or willful misconduct.

23. No Partnership. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, or employment relationship between Owner and Concessionaire. Neither Owner nor Concessionaire shall be liable, except as otherwise expressly provided in this Agreement, for any obligations or liabilities incurred by the other. Concessionaire expressly agrees to indemnify and hold Owner, and the property of the Owner, including the Premises, free and harmless from any and all obligations and liabilities incurred by Concessionaire in conducting its activities on the Premises. Concessionaire shall at all times be regarded as a tenant and shall not at any time act as agent for the Owner.

24. Nondiscrimination.

(a) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and

services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Concessionaire shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants Owner shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Concessionaire hereby authorizes Owner to take such action as the Federal Government may direct to enforce this covenant, and Concessionaire also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(c) Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

25. <u>Disadvantaged Business Enterprise Participation</u>. The Concessionaire shall be required to take all necessary and reasonable steps to achieve an Airport Concessions Disadvantaged Business Enterprise (hereinafter "ACDBE") goal as set by Owner from time to time throughout the remaining term of this Agreement. This goal shall be measured as a percentage of the Concessionaire's expenditures in relation to its operations under this agreement. The ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Part 23 and shall be counted toward the goal as set forth in those regulations.

The Concessionaire shall be required to comply with other appropriate provisions of 49 CFR Part 23 implementing Sections 511 (h) of the AAIA. The Concessionaire shall submit the following reports to Owner in the form specified by Owner for the purpose of demonstrating

compliance with this paragraph:

1. Concessionaire agrees that within sixty (60) days of the end of each calendar ear of the Term of this Agreement, it will provide a report to Owner, in a form acceptable to Owner, an annual statement setting forth all such ACDBE gross receipts for such year in accordance with the requirements of 49 CFR Part 23. (See Exhibit C).

2. Concessionaire agrees that it will also submit within the same periods described in paragraph 1 above a report to the Airport, in a form acceptable to Owner, describing the Concessionaire's total gross receipts for the year of the term as provided in paragraph 1 above and in the case of a rental car concession, also the total dollar value of vehicles and/or other goods and services purchased by the Concessionaire for each year of the Term of this Agreement. This report shall include any ACDBE or DBE participation for the year.

3. Concessionaire will have no right to terminate an ACDBE for convenience without Owner's prior written consent. If an ACDBE is terminated by the Concessionaire with Owner's consent or because of the ACDBE's default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 CFR section 23.25(d)(1)-(3) and (5)-(7), and 49 CFR section 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.

The Concessionaire's breach of its obligations under (1), (2) or (3) above shall be a default by Concessionaire under Section 20 and shall entitle Owner to exercise all its contractual and legal remedies, including termination of this Agreement.

Concessionaire agrees that Owner may review its records and on-site concessions on a (monthly/quarterly/annual) basis for compliance with all ACDBE law, rules, and regulations.

Concessionaire agrees to otherwise comply with all ACDBE laws, rules, and regulations, and to assist Owner with Owner's ACDBE Program Plan as specified herein and pursuant to 49 C.F.R. Part 23.

26. **Notices.** All notices or demands provided for or which may be given either party to the other under the terms of this Agreement shall be in writing, signed by the party giving the notice or making the demand, and shall be deemed served or delivered upon physical delivery or upon deposit in the United States mail, registered, return receipt requested, postage and registration fees prepaid, addressed as follows:

Owner: JOSLIN FIELD, MAGIC VALLEY REGIONAL AIRPORT
Attention: Airport Manager
P.O. Box 1907
Twin Falls, Idaho 83303-1907

Concessionaire: AVIS RENT A CAR SYSTEM, INC
1611 W Vista Way
Vista, CA, 92083

or to such other address as the addressee may designate by written notice to the other party delivered in accordance with the provisions of this paragraph.

27. **Compliance With Law.** Concessionaire agrees to comply with all municipal, state and federal laws, rules, regulations and ordinances. Concessionaire further agrees to comply with all current Joslin Field, Magic Valley Regional Airport Rules and Regulations, now in existence, or as may hereafter be amended during the term of this Agreement. By signing this Agreement, Concessionaire acknowledges receipt of a current copy of the Airport Rules and Regulations.

(a) Lessee further agrees to abide by reasonable rules and regulations adopted by the Airport in carrying out the Airport's obligations under the Federal Aviation Administration and Transportation Security Administration regulations and other security measures the Airport deems necessary from time to time, for the proper identification of persons and vehicles entering the aircraft operations area all as the same may be added to or modified by the Federal Aviation Administration or Transportation Security Administration.

28. **Subordination of Agreement.** The parties agree that this Agreement is subject and subordinate to the terms, reservations, restrictions, provisions and conditions of any existing or future agreement between the Owner and the United States of America, or the Owner and the state of Idaho, relative to the development, operation or maintenance of the Magic Valley Regional Airport and appurtenant facilities, the execution of which has been or may be required as a condition precedent to the participation by any Federal Agency or the expenditure of federal or state funds for the extension, expansion or development of said Airport and related facilities.

29. **Right of Inspection.** Owner reserves the right to inspect the Premises to ensure compliance with this Agreement.

30. **Waiver.** Waiver of a breach of any provision of this Agreement by any party in any particular instance shall not be deemed a waiver of any other breach of this Agreement.

31. **Attorney's Fees.** In the event a dispute should arise between the parties relating to

this Agreement, whether or not a lawsuit is ever filed, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in such dispute, and in any bankruptcy or appeal proceeding.

32. **Entire Agreement**. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter hereof and may not be modified except in writing signed by both parties.

OWNER
CITY OF TWIN FALLS, IDAHO

By_____
Ruth Pierce- Mayor

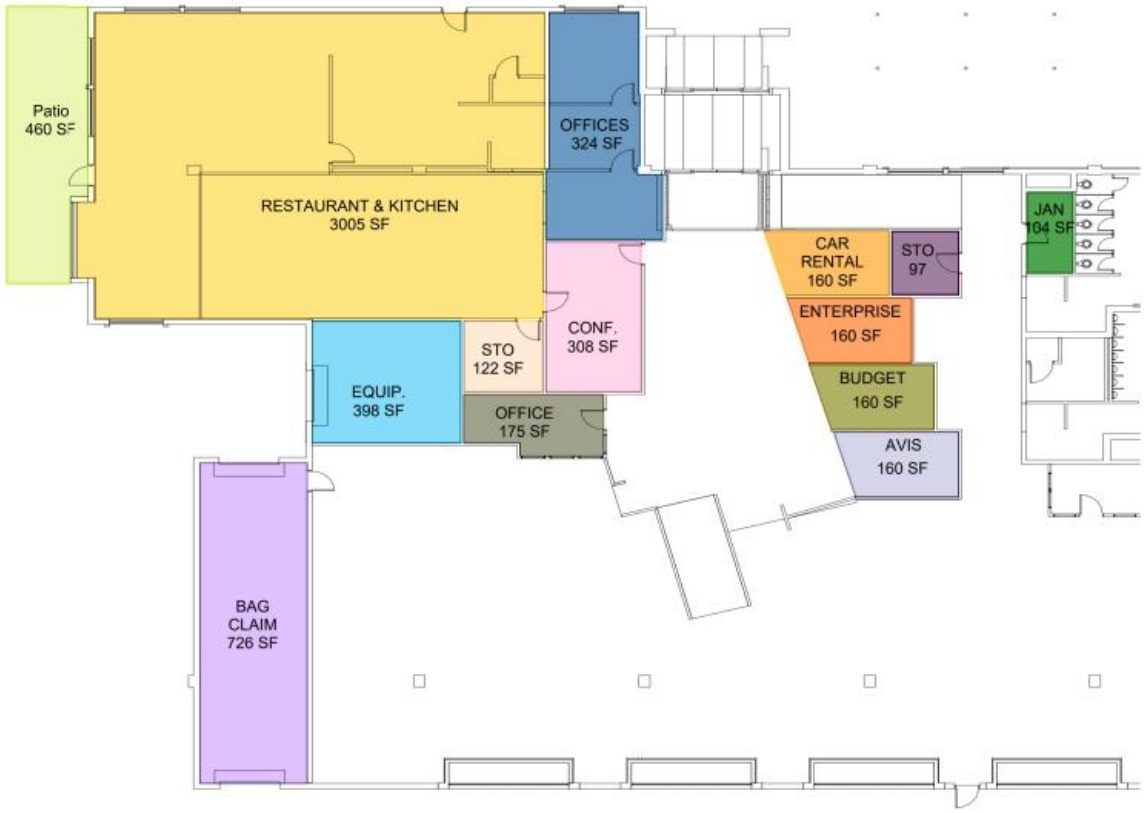
CONCESSIONAIRE
AVIS RENT A CAR SYSTEM, INC

By_____

Print name:_____

Print title:_____

MAGIC VALLEY REGIONAL AIRPORT TENANT LEASE SPACES



CSHQA

Exhibit A

AUTOMOBILE CONCESSION AGREEMENT EXHIBIT B

EXHIBIT "C"

FY2024 Reporting

ACDBE ANNUAL ATTAINMENT REPORT

1 Name of Recipient: Magic Valley Regional Airport

2 Contact Information

Preparer's Name:
Phone Number:
Email Addresss:

3 FY 2024

4 Current Car Rental ACDBE Goal — RC 0.00% RN 0.23%

Car Rental ACDBE Goal is based on:

- [x] Gross Receipts
- [ ] Goods and Services Purchased
- [ ] Not Required

5 Car Rental Cumulative ACDBE Participation

	Total Dollars	Total Number	Total to ACDBEs (#)	Total to ACDBEs / RN ($)
Prime Concessions				
Subconcessions				
Goods and Services				

6 Car Rental New ACDBE Participation This Period

	Total Dollars	Total Number	Total to ACDBEs (#)	Total to ACDBEs / RN ($)
Prime Concessions				
Subconcessions				
Goods and Services				

7 Cumulative ACDBE Participation by Race/Gender

Car Rental

Black Americans — No. / Dollars: — Names of ACDBE Firms:

Hispancis American — No. / Dollars: — Names of ACDBE Firms:

Asian-Pacific Americans — No. / Dollars: — Names of ACDBE Firms:

Asian-Indian Americans — No. / Dollars: — Names of ACDBE Firms:

Native Americans — No. / Dollars: — Names of ACDBE Firms:

Non-Minority Women — No. / Dollars: — Names of ACDBE Firms:

Others — No. / Dollars: — Names of ACDBE Firms:

Percentage of ACDBE Participation:
ACDBE Goal: 0.23%
ACDBE Goal Met:

If the ACDBE Goal was not met, please provide detailed explanation of efforts made to attract qualified ACDBE participants and reasons for the deficiency:

I certify that the above information is true and accurate to the best of my knowledge and accurately reflects our ACDBE participation and good faith efforts during the period indicated.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request:

Consideration of a request to authorize the mayor to sign a concession agreement renewal with Budget car rental.

Background:

The airport's car rental businesses are due for a 5-year renewal of their concession agreements this year. Other than the recent departure of Hertz car rental in 2024, the airport has had a steady relationship with the incumbent car rental businesses (Avis, Budget, Enterprise, National). In recent years, we've seen changes in commercial ground transportation to include the rollout of Uber/Lyft and other transportation providers to include our own Twin Falls Transit operation. However, being a regional airport servicing the Magic Valley area, we still see an important role for the rental car industry at the airport.

Approval Process:

A majority vote of the City Council is needed to approve the request.

Budget Impact:

The approval will allow for the airport to renew the car rental concession agreement and receive rental payments for the counter area and a 10% of gross sales concession fee from the car rental company.

Regulatory Impact:

The airport's lease agreements are prepared by the City Attorney and terms of the agreement are wide ranging in the requirements to protect the interests of both parties. The agreements are also subordinate to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion:

Staff recommends the City Council approve the request to authorize the mayor to sign a concession agreement renewal with Budget car rental.

Attachments: Budget car rental agreement

AUTOMOBILE CONCESSION AGREEMENT
BUDGET-RENT-A-CAR SYSTEM

THIS AUTOMOBILE CONCESSION AGREEMENT is made and entered into effective the 1st day of October 2024, by and between the **CITY OF TWIN FALLS, IDAHO**, hereinafter called "Owner", and **BUDGET- RENT- A- CAR- SYSTEM**, hereinafter called "Concessionaire."

1. Description of Property. In consideration for the rental specified below, Owner hereby leases to Concessionaire the below-described property at the Joslin Field-Magic Valley Regional Airport ("Airport"), hereinafter called the "Premises," for its exclusive use:

(a) One hundred (160) square feet of counter area and office area as shown on Exhibit "A" attached hereto and made a part hereof and labeled.

(b) Ten (10) ready car area spaces as shown on Exhibit "B" attached.. The Owners agree to restrict the use of such spaces to Concessionaire through signs provided by Concessionaire.

2. Term of Agreement. The term of this Agreement shall commence on October 1, 2024, and end on September 30, 2029.

3. Holding Over. The holding over or failure to vacate the premises at the expiration of this Agreement shall create a month-to-month tenancy upon the terms and conditions contained herein and may be terminated by either party upon thirty (30) days prior written notice to the other party.

4. Use of Premises. Owner grants Concessionaire the right to conduct and operate an automobile rental concession at the Premises. Such right and the use of the Premises described herein are granted for the purpose of providing automobile rental service at the Airport and for the purpose of arranging for such services for the public using the Airport at destinations where automobile rental service is furnished by Concessionaire or by members of Concessionaire's system. Concessionaire shall also have the right to offer, in connection with its automobile rental business, Personal Accident Insurance to its customers. No maintenance or servicing of any vehicles shall be performed in the area referenced in paragraph 1(b), or on airport property. Concessionaire is prohibited from transacting rental car business at any other point on the Airport unless written permission is obtained from Owner, which permission, if given, shall require strict compliance with all provisions of this Agreement.

(a) Multiple Brands. Dual branding, offering car rentals to customers from two nationally recognized car rental brands, will be allowed during the term of this Agreement; however, a single concessionaire may not offer rentals from more than two nationally recognized franchises.

5. Concession is Non-Exclusive. The concession granted herein is a non-exclusive concession and the Owner shall have the right to enter into automobile concession agreements with other firms, individuals or corporations, provided, however, that in any such agreement the concession fee and minimum annual guarantee shall not be less than that provided for in this Agreement. The Owner shall also have the right to enter off-premises use and permit agreements.

6. Concession Fees and Property Rent. (a) Concessionaire agrees to pay Owner, for the rights and privileges granted herein, a monthly concession fee of ten percent (10%) of Concessionaire's gross revenue, hereinafter defined. However, in no event shall the total annual

concessions fee under this Agreement be less than the guaranteed sum of Twenty-Five Thousand and no/l00th Dollars ($25,000.00).

(b) The Concessionaire further agrees to pay the following rent for property described in paragraph 1:

(1) One hundred (160) square feet of counter area and office area as shown on Exhibit "A" attached hereto and labeled.

Rental for the counter area for the period October 1, 2024, through September 30, 2029, shall be at the rate of $18.47 per square foot for an annual rent of $2,955.20, due October 1, 2024.

(2) Ten (10) ready car area parking spaces as shown on Exhibit "B" attached hereto and made a part hereof and labeled..

Rental for the ten (10) ready car area parking spaces allocated to Lessee as rental parking will be $20.00 per space monthly for an annual rent of $2,400.00, due October 1, 2024.

(c) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2024 shall be $18.47 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2024 is calculated as follows:

Annual CPI-U Index for 2023		304.702
Less Annual CPI-U Index for 2022		292.655
Change in Annual Index		12.047
Divided by Annual Index for 2022	292.655	
Equals		0.041
Which is a percentage change of		4.1%
Prior rent (effective 10/1/2023)		17.74
Plus, current percentage change	4.1%	0.727
New rent (effective 10/1/2024)		**$18.467**
160 Sq. Ft x $18.47 Annually		**$2,955.20**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased.; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent

increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

If the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

(d) Concessionaire shall furnish the Owner on or before the 20th business day of each month a certified statement of gross revenues for the immediately preceding month and shall pay the amount equal to 10 % of such gross revenue. If the foregoing amount is not paid within thirty (30) days after the same shall become due, said amount shall bear interest at the rate of twelve (12) per cent per annum.

(e) Annual Audit- Within ninety (90) days after December 31 of each year during the term hereof, Concessionaire shall furnish to the Owner a statement of Concessionaire's gross revenue, certified by a Certified Public Accountant and an appropriate corporate officer of the Concessionaire, and shall simultaneously pay to the Owner the amount, if any, due to the Owner hereunder for such preceding calendar year or part thereof over and above the amount theretofore paid to include Property Rent, a Concession fees of 10% of Gross Revenue with a the Minimum Calendar Year Annual Guarantee of $25,000.00. If Concessionaire has paid Owner during the preceding year an amount in excess of that due under 6(a) above, the Owner shall credit Concessionaire for such excess against future payments.

(f) The Owner shall have the right at any time to have an audit prepared by an independent Certified Public Accountant. In the event there is a discrepancy of gross revenues between Concessionaire's annual statement and said independent audit, Concessionaire shall bear the cost of said independent audit.

(g) “Gross Revenue” as used herein shall mean, as determined in the reasonable discretion of the Owner, all amounts charged by Operator to its customers for or in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenue shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made, goods provided and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons or entities through Operator’s operations at the Airport, without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location. Gross Revenue shall include anything and everything that is not specifically excluded herein. The only exclusions from Gross Revenue permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;
2. Amounts received as insurance proceeds for loss of, or damages to, vehicles or other property of Operator;

3. Amounts received from the sale of vehicles off- Airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals, or other products or services provided to persons through Operator's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenue; and,
4. Reimbursements for amounts actually paid to third parties for towing, parking tickets and windshield replacement.

Concessionaire shall not cause or allow any of its automobile rental business generated at the Airport to be diverted to any other location or in any manner to avoid or reduce its gross revenue on which the percentage fee is computed.

7. Abatement of Rent. In the event that one of the following conditions exists during the term hereof, a commensurate percentage of the minimum annual guarantee provided for herein shall be abated for the period the condition continues to exist:

(a) If the operation of Concessionaire's car rental business becomes impractical, unprofitable or impossible because of shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, which persist for at least thirty (30) days;

(b) If the Airport is closed by Owner for the purpose of construction for any period of twenty-one (21) consecutive days or more in any calendar month, the minimum annual guarantee shall be abated that month.

Notwithstanding, Concessionaire will pay to the Owner ten percent (10%) of its gross revenues during the period the condition continues to exist. The Owner shall return to Concessionaire a just proportion of any minimum guaranteed payment that may have been paid in advance for a month or portion thereof which falls within the period of abatement.

8. Telephone Service. Owner agrees to provide Concessionaire with access and use of the terminal telephone system at its Premises. Owner shall provide Concessionaire with one terminal system telephone and shall maintain the terminal telephone system and the system telephone at their sole cost and expense. **Concessionaire agrees that it shall pay Owner $75.00 per month for this telephone service.**

9. Utilities. During the term of this Lease, Owner agrees to pay for all water, gas, and electricity used in or about said Premises and Airport-related facilities.

(a) **Communication and Equipment.** Lessee agrees to provide and pay for its own communication facilities and equipment and Lessee agrees that the facilities to be provided by Airport hereunder are for the purpose of providing automobile rental services. Lessee's communication facilities and equipment shall not, in any respect, interfere with communication equipment used by the Airport, airlines, TSA or other aviation related users. Lessee agrees to, at its own expense, resolve any interference between its communication equipment and any used by the Airport, airlines, TSA or other aviation related users.

10. Alterations and Improvements. During the term hereof Concessionaire shall have the right, at Concessionaire's sole expense, to alter existing improvements or erect new or additional improvements on the Premises as may be required in connection with

Concessionaire's operations hereunder, and to install therein and thereon such equipment and facilities as Concessionaire may deem necessary or desirable, provided, however, that no such alterations or improvements shall be made or installed by Concessionaire without the prior written consent of the Owner. Concessionaire further agrees that prior to the alteration or installation of or making of any such improvement, it shall submit the general plan, location, design and character thereof to the Owner for approval, and the City for zoning approval and building permits.

11. Signs. Concessionaire, after first obtaining Airport Manager approval, may install, and thereafter operate and maintain, at its sole expense, illuminating and non-illuminating signs advertising Concessionaire's business on the Premises, and at such other place or places in or upon the Airport as may be mutually agreed upon in advance by the parties hereto.

12. Concessionaire's Business Operations. Concessionaire hereby covenants and agrees:

(a) To furnish good, prompt and efficient service, adequate to meet all reasonable demands for automobile rental service at the Airport, on a fair and reasonable basis, and to charge prices for such services in accordance with its usual standards, on a basis substantially similar to that charged by it for similar services at airports of comparable size within the same general area.

(b) That rental automobiles made available hereunder shall be no more than two model years old and shall be maintained at Concessionaire's sole expense, in good operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.

(c) That the facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental service shall remain open for such periods during each day and such days during each week as may be necessary to meet reasonable demands for said services. Lessee agrees to meet all scheduled airline arriving flights at the Airport during the daily hours of 9:00 a.m.-11:45 p.m. (d) That personnel performing services hereunder shall be neat, clean and courteous, and Concessionaire shall not permit its agents, servants, or employees so engaged to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the space assigned in any manner whatsoever except through the use of signs constructed and maintained in accordance with this Agreement.

(e) That it shall abide by and be subject to all rules and regulations which are now or may from time to time be adopted by Owner concerning management, operation or use of the Airport.

(f) That it will keep or cause to be kept true, accurate and complete records of business conducted hereunder and Concessionaire further agrees that the Owner shall have the right, through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times for the purpose of determining the accuracy thereof and of the reports required to be made by Concessionaire pursuant to Section 6.

(g) That it will meet all expenses in connection with the use of the Premises occupied by it and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Premises or structures and improvements at any time situated thereon, and that it will secure all such permits and licenses.

(h) That it will furnish, install, operate and maintain the concession provided hereunder and keep the same as well as the Premises made available to it and the furniture, fixtures and equipment installed therein and thereon, all in good order, condition and repair, and upon termination of this Agreement will deliver up the said Premises to the Owner in good order, condition and repair, reasonable wear and tear excepted.

(i) It will maintain in good condition and repair the areas leased to it and shall keep said areas clean and neat and not permit accumulation of waste, dirt or debris on the same, and shall be responsible for garbage and trash removal.

(j) Concessionaire shall not sell gasoline, repair services or related services on the Airport; however, Concessionaire may top-off returned rentals and bill customers for such amount as well as any amount necessary for the repair of damage to rentals.

13. Hold Harmless. Concessionaire shall indemnify and hold Owner and the property of the Owner, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Owner's sole negligence or willful misconduct, resulting from Concessionaire's occupation and use of the Premises and related Airport facilities at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Concessionaire's occupation and use of the Premises at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Concessionaire's improvements or personal property in or on the Premises or Airport-related facilities, or the acts or omissions of any person in or on the Premises or Airport-related facilities with the express or implied consent of the Concessionaire including but not limited to the Concessionaire, it's agents, licensees, occupants and users of the Premises. Provided however, Concessionaire shall have no obligation to indemnify and hold Owner harmless for claims, liability, loss, damage or expense directly resulting from Owner's negligence or willful misconduct except by way of liability insurance required in Section 14. Owner shall not be liable for any personal injury or property damage which may be sustained by Concessionaire, it's agents, licensees, occupants and users or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Concessionaire, it's agents, licensees, occupants and users of the Premises, and Concessionaire agrees to indemnify and hold Owner harmless from such liability.

Should Owner be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Concessionaire in connection with or arising out of an event covered by this indemnification provision, Concessionaire shall pay and/or otherwise compensate Owner for Owner's costs and expenses incurred in such suit, action or demand without limitation. The Concessionaire shall give reasonable notice to Owner of any such claims or actions. The Concessionaire shall, in writing, notify Owner of the counsel to be used in carrying out its obligations herein. Owner shall be entitled to object to the use of said counsel and shall give reasonable notice of an objection regarding the use of said counsel. Further, Concessionaire's agreement to indemnify Owner is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Concessionaire pursuant to the provisions of this Agreement. The provisions of the paragraph shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Agreement.

Concessionaire hereby agrees with Owner that Owner shall not be liable for damage to the property of Concessionaire, Concessionaire's employees, agents, licensees, occupants and users, or any other person in or about the Premises at the request, or with the permission of Concessionaire. Further, the parties agree that Owner shall not be liable for any damages arising from any act or neglect of any other tenant of Owner.

14. Liability Insurance. Concessionaire shall maintain at its expense a policy of public liability insurance, covering Concessionaire's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Owner as an additional insured and protecting Owner and Concessionaire against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities relating to or arising out of Concessionaire's occupation and use of the Premises, with limits of at least $2,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Owner not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense**,** subject to policy terms, conditions, limitations and exclusions. With respect to the coverages required in this paragraph, the parties agree that Concessionaire's policy or policies shall be primary to any other valid and collectible insurance available to Owner.

The above-required insurance shall be with an insurance carrier, or insurance carriers, satisfactory to Owner and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Owner. Notice shall only be provided if the insurance company cancels or alters the policy affecting the requirements of Owner. Concessionaire shall provide Owner with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Owner.

Concessionaire shall also, without cost to the Owner, maintain during the term hereof automobile liability insurance in accordance with the terms and conditions of its automobile rental agreements, covering the operation of rental automobiles hereunder. All such general liability insurance and automobile liability insurance shall provide liability limits of not less than $1,000,000.00 on account of personal injury, death or property damage or other loss as a result of any one occurrence or accident, regardless of the number of persons injured or number of claimants. Concessionaire shall provide Owner certificates evidencing all such insurance and containing a provision that the policies cannot be canceled or amended without giving the Owner ten (10) days prior written notice.

15. Concessionaire's Property. All personal property, including trade fixtures, owned or leased by Concessionaire and used upon the Premises, shall be at the risk of Concessionaire.

16. Owner's Right to Terminate. Owner shall have the right to terminate this Agreement upon ten (10) days prior written notice to Concessionaire, upon or after the happening of one or more of the following events:

(a) If Concessionaire shall make a general assignment for the benefit of creditors;

(b) If Concessionaire shall file a voluntary petition in bankruptcy or a petition seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy

laws or under any similar state laws;

(c) If any involuntary petition in bankruptcy shall be filed against Concessionaire and Concessionaire is thereafter adjudicated a bankrupt thereunder;

(d) If Concessionaire shall consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of the property of Concessionaire;

(e) If Concessionaire shall voluntarily abandon and discontinue its automobile rental service at the Airport for a period of sixty (60) consecutive days, or if Concessionaire shall abandon its Premises in the Airport for a period of sixty (60) days;

(f) If Concessionaire shall fail to pay the rental charges or other money payments required by this Agreement and such failure shall not be remedied within thirty (30) days following receipt by Concessionaire of written demand from the Owner to do so; or,

(g) If Concessionaire shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it hereunder and shall fail to commence with due diligence to remedy the default within thirty (30) days following receipt by Concessionaire of written demand from the Owner to do so.

In the event of termination of this Agreement by the Owner for any of the reasons specified above, Concessionaire shall have thirty (30) days within which to remove all trade fixtures and personal property installed in or upon the premises by Concessionaire.

17. Concessionaire's Right to Terminate. Concessionaire shall have the right to terminate this Agreement upon ten (10) days prior written notice to Owner, upon the happening of one or more of the following events:

(a) The issuance by any court of competent jurisdiction of an injunction, order or decree preventing or restraining the use of the Airport for normal airport purposes or the use of any part thereof which may be used by Concessionaire and which is necessary for Concessionaire's operations on the Airport, or preventing Concessionaire from operating an automobile rental business, which remains in force for a period of at least thirty (30) days;

(b) If the Owner shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Agreement and shall fail to cure said default within thirty (30) days following receipt of written demand from Concessionaire to do so;

(c) If all or a material part of the Airport or Airport facilities shall be destroyed by fire, explosion, earthquake, other casualty, or acts of God or the public enemy;

(d) If the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to interfere materially with Concessionaire's operations for a period of thirty (30) consecutive days or more;

(e) Permanent abandonment of the Airport as an air terminal.

18. Duties Upon Termination. Upon the expiration or earlier termination of this Agreement, Concessionaire shall promptly remove or cause to be removed at Concessionaire's expense from the Premises and the Facility any signs, notices and displays, furniture, trade fixtures and personal property on, installed in or upon the Premises by Concessionaire and surrender the Premises in broom clean, first-class condition, ordinary wear and tear excepted. In default of such removal by Concessionaire, all such property, and every interest of Concessionaire in the same, shall be conclusively presumed to have been conveyed by Concessionaire to Owner under this Agreement as a bill of sale without compensation, allowance or credit to Concessionaire. All Concessionaire's improvements or additions to the Premises that

cannot be removed without damage to the Premises shall be deemed the Owner's property; provided, however, that Owner may elect prior to the termination of the Agreement, or within ten (10) days thereafter, to require Concessionaire to remove any installation or addition at Concessionaire's expense.

19. Licensee May Fulfill Concessionaire's Obligations. The parties agree that any and all obligations of Concessionaire hereunder may be fulfilled or discharged either by Concessionaire or by a licensee member of the Concessionaire, duly appointed thereto by the Concessionaire, and that any and all privileges of every kind granted Concessionaire hereunder may extend to and be enjoyed by such licensee so appointed, provided, however, that notwithstanding the method of operation employed by Concessionaire hereunder, Concessionaire shall continue always to remain directly liable to the Owner for the performance of all terms and conditions of this Agreement. Except as hereinabove set out, the right to occupy the Premises occupied by Concessionaire hereunder may not be sublet, in whole or part, and Concessionaire shall not assign this Agreement, nor permit any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation, without prior written consent of the Owner.

20. Default and Forfeiture. Time and the strict and faithful performance of each and every one of the conditions of this lease is expressly made the essence of this Agreement. If default be made by the Concessionaire in payment of any part of Concessionaire's rent when the same shall become due, or default be made by the Concessionaire in keeping, performing or observing any of the covenants and agreements herein contained and such default shall remain so for a period of thirty (30) days after written notice shall have been sent by certified mail to Concessionaire as hereinafter provided, then in such event the Owner may, at Owner' election, either in law or equity, seek performance of this Lease or may declare said term and lease forfeited and ended and re-enter said demised Premises to repossess and enjoy the same, and the effect of such default shall, at the election of Owner, without further notice or demand, constitute a forfeiture and termination of this lease. If the Concessionaire shall fail to surrender possession of the demised Premises to Owner, the Concessionaire shall be deemed guilty of an unlawful and forcible detention of said Premises. If the property is abandoned by Concessionaire in conjunction with an event of default, then termination shall be automatic and without notice. If Concessionaire shall abandon or vacate said Premises, or if this Lease be terminated for breach of any of the covenants and agreements herein contained, Concessionaire hereby agrees to pay all reasonable expenses incurred by Owner in obtaining possession of said Premises from Concessionaire, including reasonable attorney's fees, and to pay such other expenses as the Owner may incur in putting the Premises in good order and condition as herein provided, normal wear and tear excepted, and also to pay all other reasonable and necessary expenses or commissions paid by Owner in releasing the Premises. In the event of notification of default by Owner to Concessionaire and Concessionaire does in fact cure such default, then and in that event Concessionaire shall pay, in addition to all arrearages existing, all reasonable attorney's fees and costs incurred by Owner in determination of the default and the notification to the defaulting Concessionaire.

If Concessionaire shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any consecutive twelve-month-period during the term hereof, then such conduct shall, at the election of Owner, represent

a separate event of default which cannot be cured by Concessionaire. Concessionaire acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Owner and deprive it of timely performance by Concessionaire hereunder.

21. Condemnation. In case of a taking by eminent domain ("Taking"), other than for temporary use, of either (a) the entire Premises, or (b) such a substantial part of the Premises as shall have the result that the portion of the Premises remaining after such Taking (even if restoration were made) will be economically unsuitable for the use of the Premises for purposes described in Paragraph 4, this Agreement shall terminate as of the date of the transfer of possession to the condemning authority. In the case of a total taking, the entire amount of any condemnation award shall be paid to and retained by Owner, and Concessionaire shall have no right or claim with respect thereto.

In the event of a taking of a portion of the Premises that is not a total taking, then and in that event this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such taking and rent shall be reduced on a square footage basis at the then applicable rental rate provided for in Paragraph 6 of this Agreement. The entire amount of any condemnation award for a taking of a portion of the Premises shall be paid to and be retained by Owner.

Neither the execution of this Lease nor any provision of this Lease shall affect in any way Owner's right to condemn the Premises herein granted under its power of eminent domain.

22. Inconvenience during Construction. Lessee recognizes that from time to time during the term of this Lease it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconveniences or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from Lessor's negligence or willful misconduct.

23. No Partnership. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, or employment relationship between Owner and Concessionaire. Neither Owner nor Concessionaire shall be liable, except as otherwise expressly provided in this Agreement, for any obligations or liabilities incurred by the other. Concessionaire expressly agrees to indemnify and hold Owner, and the property of the Owner, including the Premises, free and harmless from any and all obligations and liabilities incurred by Concessionaire in conducting its activities on the Premises. Concessionaire shall at all times be regarded as a tenant and shall not at any time act as agent for the Owner.

24. Nondiscrimination.

(a) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and

services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Concessionaire shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants Owner shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Concessionaire hereby authorizes Owner to take such action as the Federal Government may direct to enforce this covenant, and Concessionaire also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(c) Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

25. <u>Disadvantaged Business Enterprise Participation</u>. The Concessionaire shall be required to take all necessary and reasonable steps to achieve an Airport Concessions Disadvantaged Business Enterprise (hereinafter "ACDBE") goal as set by Owner from time to time throughout the remaining term of this Agreement. This goal shall be measured as a percentage of the Concessionaire's expenditures in relation to its operations under this agreement. The ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Part 23 and shall be counted toward the goal as set forth in those regulations.

The Concessionaire shall be required to comply with other appropriate provisions of 49 CFR Part 23 implementing Sections 511 (h) of the AAIA. The Concessionaire shall submit the following reports to Owner in the form specified by Owner for the purpose of demonstrating

compliance with this paragraph:

1. Concessionaire agrees that within sixty (60) days of the end of each calendar ear of the Term of this Agreement, it will provide a report to Owner, in a form acceptable to Owner, an annual statement setting forth all such ACDBE gross receipts for such year in accordance with the requirements of 49 CFR Part 23. (See Exhibit C).

2. Concessionaire agrees that it will also submit within the same periods described in paragraph 1 above a report to the Airport, in a form acceptable to Owner, describing the Concessionaire's total gross receipts for the year of the term as provided in paragraph 1 above and in the case of a rental car concession, also the total dollar value of vehicles and/or other goods and services purchased by the Concessionaire for each year of the Term of this Agreement. This report shall include any ACDBE or DBE participation for the year.

3. Concessionaire will have no right to terminate an ACDBE for convenience without Owner's prior written consent. If an ACDBE is terminated by the Concessionaire with Owner's consent or because of the ACDBE's default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 CFR section 23.25(d)(1)-(3) and (5)-(7), and 49 CFR section 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.

The Concessionaire's breach of its obligations under (1), (2) or (3) above shall be a default by Concessionaire under Section 20 and shall entitle Owner to exercise all its contractual and legal remedies, including termination of this Agreement.

Concessionaire agrees that Owner may review its records and on-site concessions on a (monthly/quarterly/annual) basis for compliance with all ACDBE law, rules, and regulations.

Concessionaire agrees to otherwise comply with all ACDBE laws, rules, and regulations, and to assist Owner with Owner's ACDBE Program Plan as specified herein and pursuant to 49 C.F.R. Part 23.

26. **Notices.** All notices or demands provided for or which may be given either party to the other under the terms of this Agreement shall be in writing, signed by the party giving the notice or making the demand, and shall be deemed served or delivered upon physical delivery or upon deposit in the United States mail, registered, return receipt requested, postage and registration fees prepaid, addressed as follows:

Owner: JOSLIN FIELD, MAGIC VALLEY REGIONAL AIRPORT
Attention: Airport Manager
P.O. Box 1907
Twin Falls, Idaho 83303-1907

Concessionaire: BUDGET RENT A CAR SYSTEM
1611 W Vista Way
Vista, CA, 92083

or to such other address as the addressee may designate by written notice to the other party delivered in accordance with the provisions of this paragraph.

27. **Compliance With Law.** Concessionaire agrees to comply with all municipal, state and federal laws, rules, regulations and ordinances. Concessionaire further agrees to comply with all current Joslin Field, Magic Valley Regional Airport Rules and Regulations, now in existence, or as may hereafter be amended during the term of this Agreement. By signing this Agreement, Concessionaire acknowledges receipt of a current copy of the Airport Rules and Regulations.

(a) Lessee further agrees to abide by reasonable rules and regulations adopted by the Airport in carrying out the Airport's obligations under the Federal Aviation Administration and Transportation Security Administration regulations and other security measures the Airport deems necessary from time to time, for the proper identification of persons and vehicles entering the aircraft operations area all as the same may be added to or modified by the Federal Aviation Administration or Transportation Security Administration.

28. **Subordination of Agreement.** The parties agree that this Agreement is subject and subordinate to the terms, reservations, restrictions, provisions and conditions of any existing or future agreement between the Owner and the United States of America, or the Owner and the state of Idaho, relative to the development, operation or maintenance of the Magic Valley Regional Airport and appurtenant facilities, the execution of which has been or may be required as a condition precedent to the participation by any Federal Agency or the expenditure of federal or state funds for the extension, expansion or development of said Airport and related facilities.

29. **Right of Inspection.** Owner reserves the right to inspect the Premises to ensure compliance with this Agreement.

30. **Waiver.** Waiver of a breach of any provision of this Agreement by any party in any particular instance shall not be deemed a waiver of any other breach of this Agreement.

31. **Attorney's Fees.** In the event a dispute should arise between the parties relating to

this Agreement, whether or not a lawsuit is ever filed, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in such dispute, and in any bankruptcy or appeal proceeding.

32. **Entire Agreement**. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter hereof and may not be modified except in writing signed by both parties.

OWNER
CITY OF TWIN FALLS, IDAHO

By_____
Ruth Pierce- Mayor

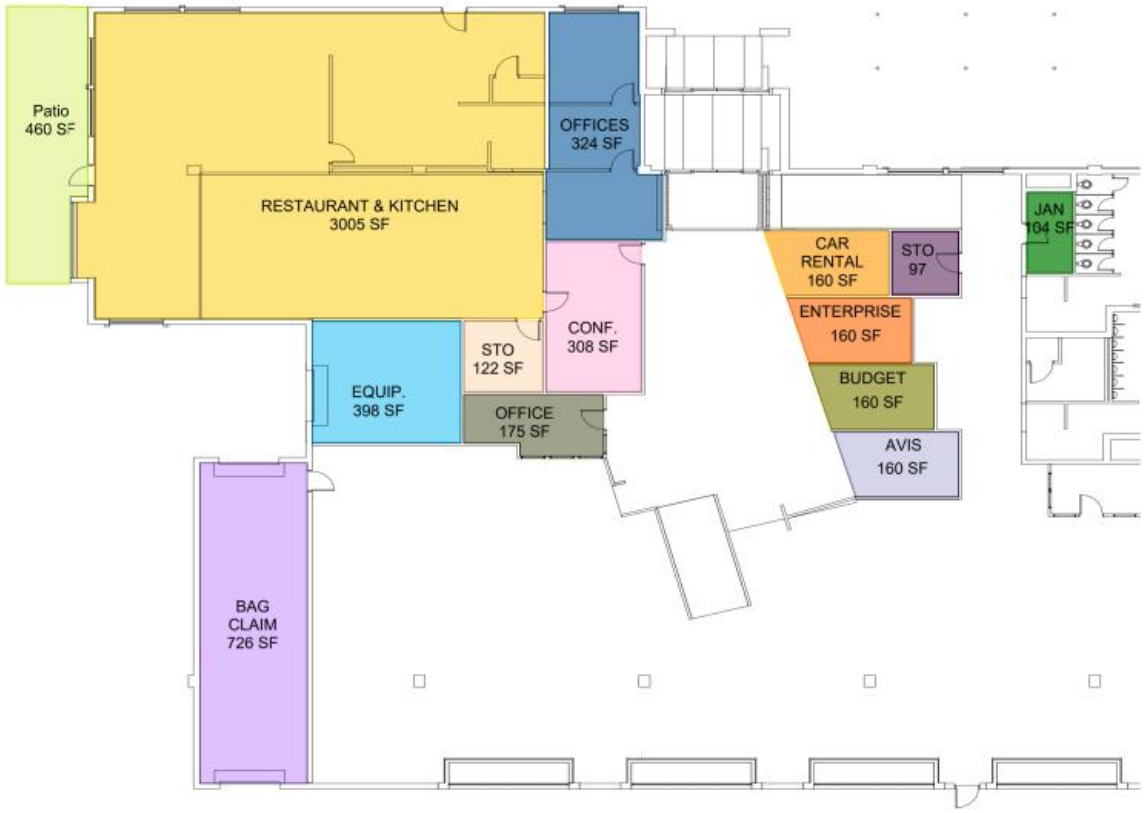
CONCESSIONAIRE
BUDGET RENT A CAR SYSTEM

By_____

Print name:_____

Print title:_____

MAGIC VALLEY REGIONAL AIRPORT TENANT LEASE SPACES



CSHQA

Exhibit A

AUTOMOBILE CONCESSION AGREEMENT EXHIBIT B

EXHIBIT "C" FY2024 Reporting

ACDBE ANNUAL ATTAINMENT REPORT

1 Name of Recipient: Magic Valley Regional Airport

2 Contact Information
Preparer's Name:
Phone Number:
Email Addresss:

3 FY 2024

4 Current Car Rental ACDBE Goal RC 0.00% RN 0.23%

Car Rental ACDBE Goal is based on:
- [x] Gross Receipts
- [ ] Goods and Services Purchased
- [ ] Not Required

5 Car Rental Cumulative ACDBE Participation

	Total Dollars	Total Number	Total to ACDBEs (#)	Total to ACDBEs / RN ($)
Prime Concessions				
Subconcessions				
Goods and Services				

6 Car Rental New ACDBE Participation This Period

	Total Dollars	Total Number	Total to ACDBEs (#)	Total to ACDBEs / RN ($)
Prime Concessions				
Subconcessions				
Goods and Services				

7 Cumulative ACDBE Participation by Race/Gender

Car Rental

Black Americans No. / Dollars:
Names of ACDBE Firms:

Hispancis American No. / Dollars:
Names of ACDBE Firms:

Asian-Pacific Americans No. / Dollars:
Names of ACDBE Firms:

Asian-Indian Americans No. / Dollars:
Names of ACDBE Firms:

Native Americans No. / Dollars:
Names of ACDBE Firms:

Non-Minority Women No. / Dollars:
Names of ACDBE Firms:

Others No. / Dollars:
Names of ACDBE Firms:

Percentage of ACDBE Participation:
ACDBE Goal: 0.23%
ACDBE Goal Met:

If the ACDBE Goal was not met, please provide detailed explanation of efforts made to attract qualified ACDBE participants and reasons for the deficiency:

I certify that the above information is true and accurate to the best of my knowledge and accurately reflects our ACDBE participation and good faith efforts during the period indicated.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request:

Consideration of a request to authorize the mayor to sign a concession agreement renewal with Enterprise car rental.

Background:

The airport's car rental businesses are due for a 5-year renewal of their concession agreements this year. Other than the recent departure of Hertz car rental in 2024, the airport has had a steady relationship with the incumbent car rental businesses (Avis, Budget, Enterprise, National). In recent years, we've seen changes in commercial ground transportation to include the rollout of Uber/Lyft and other transportation providers to include our own Twin Falls Transit operation. However, being a regional airport servicing the Magic Valley area, we still see an important role for the rental car industry at the airport.

Approval Process:

A majority vote of the City Council is needed to approve the request.

Budget Impact:

The approval will allow for the airport to renew the car rental concession agreement and receive rental payments for the counter area and a 10% of gross sales concession fee from the car rental company.

Regulatory Impact:

The airport's lease agreements are prepared by the City Attorney and terms of the agreement are wide ranging in the requirements to protect the interests of both parties. The agreements are also subordinate to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion:

Staff recommends the City Council approve the request to authorize the mayor to sign a concession agreement renewal with Enterprise car rental.

Attachments: Enterprise car rental agreement

AUTOMOBILE CONCESSION AGREEMENT
ENTERPRISE-RENT-A-CAR COMPANY of UT, LLC

THIS AUTOMOBILE CONCESSION AGREEMENT is made and entered into effective the 1st day of October 2024, by and between the **CITY OF TWIN FALLS, IDAHO**, hereinafter called "Owner", and **ENTERPRISE-RENT-A-CAR COMPANY of UT, LLC**, hereinafter called "Concessionaire."

1. Description of Property. In consideration for the rental specified below, Owner hereby leases to Concessionaire the below-described property at the Joslin Field-Magic Valley Regional Airport ("Airport"), hereinafter called the "Premises," for its exclusive use:

(a) One hundred (160) square feet of counter area and office area as shown on Exhibit "A" attached hereto and made a part hereof and labeled.

(b) Ten (10) ready car area spaces as shown on Exhibit "B" attached. The Owners agree to restrict the use of such spaces to Concessionaire through signs provided by Concessionaire.

2. Term of Agreement. The term of this Agreement shall commence on October 1, 2024, and end on September 30, 2029.

3. Holding Over. The holding over or failure to vacate the premises at the expiration of this Agreement shall create a month-to-month tenancy upon the terms and conditions contained herein and may be terminated by either party upon thirty (30) days prior written notice to the other party.

4. Use of Premises. Owner grants Concessionaire the right to conduct and operate an automobile rental concession at the Premises. Such right and the use of the Premises described herein are granted for the purpose of providing automobile rental service at the Airport and for the purpose of arranging for such services for the public using the Airport at destinations where automobile rental service is furnished by Concessionaire or by members of Concessionaire's system. Concessionaire shall also have the right to offer, in connection with its automobile rental business, Personal Accident Insurance to its customers. No maintenance or servicing of any vehicles shall be performed in the area referenced in paragraph 1(b), or on airport property. Concessionaire is prohibited from transacting rental car business at any other point on the Airport unless written permission is obtained from Owner, which permission, if given, shall require strict compliance with all provisions of this Agreement.

(a) Multiple Brands. Dual branding, offering car rentals to customers from two nationally recognized car rental brands, will be allowed during the term of this Agreement; however, a single concessionaire may not offer rentals from more than two nationally recognized franchises.

5. Concession is Non-Exclusive. The concession granted herein is a non-exclusive concession and the Owner shall have the right to enter into automobile concession agreements with other firms, individuals or corporations, provided, however, that in any such agreement the concession fee and minimum annual guarantee shall not be less than that provided for in this Agreement. The Owner shall also have the right to enter off-premises use and permit agreements.

6. Concession Fees and Property Rent. (a) Concessionaire agrees to pay Owner, for the rights and privileges granted herein, a monthly concession fee of ten percent (10%) of Concessionaire's gross revenue, hereinafter defined. However, in no event shall the total annual

concessions fee under this Agreement be less than the guaranteed sum of Twenty-Five Thousand and no/l00th Dollars ($25,000.00).

(b) The Concessionaire further agrees to pay the following rent for property described in paragraph 1:

(1) One hundred (160) square feet of counter area and office area as shown on Exhibit "A" attached hereto and labeled.

Rental for the counter area for the period October 1, 2024, through September 30, 2029, shall be at the rate of $18.47 per square foot for an annual rent of $2,955.20, due October 1, 2024.

(2) Ten (10) ready car area parking spaces as shown on Exhibit "B" attached hereto and made a part hereof and labeled..

Rental for the ten (10) ready car area parking spaces allocated to Lessee as rental parking will be $20.00 per space monthly for an annual rent of $2,400.00, due October 1, 2024.

(c) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2024 shall be $18.47 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2024 is calculated as follows:

Annual CPI-U Index for 2023		304.702
Less Annual CPI-U Index for 2022		292.655
Change in Annual Index		12.047
Divided by Annual Index for 2022	292.655	
Equals		0.041
Which is a percentage change of		4.1%
Prior rent (effective 10/1/2023)		17.74
Plus, current percentage change	4.1%	0.727
New rent (effective 10/1/2024)		**$18.467**
160 Sq. Ft x $18.47 Annually		**$2,955.20**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased.; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent

increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

If the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

(d) Concessionaire shall furnish the Owner on or before the 20th business day of each month a certified statement of gross revenues for the immediately preceding month and shall pay the amount equal to 10 % of such gross revenue. If the foregoing amount is not paid within thirty (30) days after the same shall become due, said amount shall bear interest at the rate of twelve (12) per cent per annum.

(e) Annual Audit- Within ninety (90) days after December 31 of each year during the term hereof, Concessionaire shall furnish to the Owner a statement of Concessionaire's gross revenue, certified by a Certified Public Accountant and an appropriate corporate officer of the Concessionaire, and shall simultaneously pay to the Owner the amount, if any, due to the Owner hereunder for such preceding calendar year or part thereof over and above the amount theretofore paid to include Property Rent, a Concession fees of 10% of Gross Revenue with a the Minimum Calendar Year Annual Guarantee of $25,000.00. If Concessionaire has paid Owner during the preceding year an amount in excess of that due under 6(a) above, the Owner shall credit Concessionaire for such excess against future payments.

(f) The Owner shall have the right at any time to have an audit prepared by an independent Certified Public Accountant. In the event there is a discrepancy of gross revenues between Concessionaire's annual statement and said independent audit, Concessionaire shall bear the cost of said independent audit.

(g) “Gross Revenue” as used herein shall mean, as determined in the reasonable discretion of the Owner, all amounts charged by Operator to its customers for or in connection with agreements it secures through its operations and business at the Airport, regardless of whether such amount is actually paid to or received by Operator. Gross Revenue shall include all monies or other consideration of whatsoever nature paid or payable to Operator by customers for all sales made, goods provided and services performed for cash, credit or consideration in connection with automobile and vehicle rentals or other products or services provided to persons or entities through Operator’s operations at the Airport, without regard to the ownership, area, fleet, or location assignment of vehicles and without regard to the manner in which or place at which the vehicles or other products or services are furnished to Operator’s customers and without regard to whether the vehicles or other products are returned to the Airport or to some other location. Gross Revenue shall include anything and everything that is not specifically excluded herein. The only exclusions from Gross Revenue permitted under this Agreement shall be the specific exclusions set forth below:

1. Federal, state, county, city or municipal sales, use, or excise taxes now in effect or hereinafter levied on Operator’s operations which are separately stated on customers’ rental contracts and collected from customers of Operator;
2. Amounts received as insurance proceeds for loss of, or damages to, vehicles or other property of Operator;

3. Amounts received from the sale of vehicles off- Airport premises; provided, however, any amounts paid in connection with automobile and vehicle rentals, or other products or services provided to persons through Operator's operations that are applied to or otherwise reimbursed as a result of the sale of a vehicle shall not be excluded from Gross Revenue; and,
4. Reimbursements for amounts actually paid to third parties for towing, parking tickets and windshield replacement.

Concessionaire shall not cause or allow any of its automobile rental business generated at the Airport to be diverted to any other location or in any manner to avoid or reduce its gross revenue on which the percentage fee is computed.

7. Abatement of Rent. In the event that one of the following conditions exists during the term hereof, a commensurate percentage of the minimum annual guarantee provided for herein shall be abated for the period the condition continues to exist:

(a) If the operation of Concessionaire's car rental business becomes impractical, unprofitable or impossible because of shortages or other disruptions in the supply of automobiles, gasoline or other goods necessary for the operation thereof, which persist for at least thirty (30) days;

(b) If the Airport is closed by Owner for the purpose of construction for any period of twenty-one (21) consecutive days or more in any calendar month, the minimum annual guarantee shall be abated that month.

Notwithstanding, Concessionaire will pay to the Owner ten percent (10%) of its gross revenues during the period the condition continues to exist. The Owner shall return to Concessionaire a just proportion of any minimum guaranteed payment that may have been paid in advance for a month or portion thereof which falls within the period of abatement.

8. Telephone Service. Owner agrees to provide Concessionaire with access and use of the terminal telephone system at its Premises. Owner shall provide Concessionaire with one terminal system telephone and shall maintain the terminal telephone system and the system telephone at their sole cost and expense. **Concessionaire agrees that it shall pay Owner $75.00 per month for this telephone service.**

9. Utilities. During the term of this Lease, Owner agrees to pay for all water, gas, and electricity used in or about said Premises and Airport-related facilities.

(a) **Communication and Equipment.** Lessee agrees to provide and pay for its own communication facilities and equipment and Lessee agrees that the facilities to be provided by Airport hereunder are for the purpose of providing automobile rental services. Lessee's communication facilities and equipment shall not, in any respect, interfere with communication equipment used by the Airport, airlines, TSA or other aviation related users. Lessee agrees to, at its own expense, resolve any interference between its communication equipment and any used by the Airport, airlines, TSA or other aviation related users.

10. Alterations and Improvements. During the term hereof Concessionaire shall have the right, at Concessionaire's sole expense, to alter existing improvements or erect new or additional improvements on the Premises as may be required in connection with

Concessionaire's operations hereunder, and to install therein and thereon such equipment and facilities as Concessionaire may deem necessary or desirable, provided, however, that no such alterations or improvements shall be made or installed by Concessionaire without the prior written consent of the Owner. Concessionaire further agrees that prior to the alteration or installation of or making of any such improvement, it shall submit the general plan, location, design and character thereof to the Owner for approval, and the City for zoning approval and building permits.

11. Signs. Concessionaire, after first obtaining Airport Manager approval, may install, and thereafter operate and maintain, at its sole expense, illuminating and non-illuminating signs advertising Concessionaire's business on the Premises, and at such other place or places in or upon the Airport as may be mutually agreed upon in advance by the parties hereto.

12. Concessionaire's Business Operations. Concessionaire hereby covenants and agrees:

(a) To furnish good, prompt and efficient service, adequate to meet all reasonable demands for automobile rental service at the Airport, on a fair and reasonable basis, and to charge prices for such services in accordance with its usual standards, on a basis substantially similar to that charged by it for similar services at airports of comparable size within the same general area.

(b) That rental automobiles made available hereunder shall be no more than two model years old and shall be maintained at Concessionaire's sole expense, in good operative order, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.

(c) That the facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental service shall remain open for all scheduled flight arrivals that occur between 8am and 5pm daily. Lessee will make all reasonable efforts to meet arriving flights outside of these hours.

(e) That it shall abide by and be subject to all rules and regulations which are now or may from time to time be adopted by Owner concerning management, operation or use of the Airport.

(f) That it will keep or cause to be kept true, accurate and complete records of business conducted hereunder and Concessionaire further agrees that the Owner shall have the right, through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times for the purpose of determining the accuracy thereof and of the reports required to be made by Concessionaire pursuant to Section 6.

(g) That it will meet all expenses in connection with the use of the Premises occupied by it and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Premises or structures and improvements at any time situated thereon, and that it will secure all such permits and licenses.

(h) That it will furnish, install, operate and maintain the concession provided hereunder and keep the same as well as the Premises made available to it and the furniture, fixtures and equipment installed therein and thereon, all in good order, condition and repair, and upon termination of this Agreement will deliver up the said Premises to the Owner in good order, condition and repair, reasonable wear and tear excepted.

(i) It will maintain in good condition and repair the areas leased to it and shall keep said areas clean and neat and not permit accumulation of waste, dirt or debris on the same, and shall be responsible for garbage and trash removal.

(j) Concessionaire shall not sell gasoline, repair services or related services on the Airport; however, Concessionaire may top-off returned rentals and bill customers for such amount as well as any amount necessary for the repair of damage to rentals.

13. Hold Harmless. Concessionaire shall indemnify and hold Owner and the property of the Owner, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Owner's sole negligence or willful misconduct, resulting from Concessionaire's occupation and use of the Premises and related Airport facilities at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Concessionaire's occupation and use of the Premises at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Concessionaire's improvements or personal property in or on the Premises or Airport-related facilities, or the acts or omissions of any person in or on the Premises or Airport-related facilities with the express or implied consent of the Concessionaire including but not limited to the Concessionaire, it's agents, licensees, occupants and users of the Premises. Provided however, Concessionaire shall have no obligation to indemnify and hold Owner harmless for claims, liability, loss, damage or expense directly resulting from Owner's negligence or willful misconduct except by way of liability insurance required in Section 14. Owner shall not be liable for any personal injury or property damage which may be sustained by Concessionaire, it's agents, licensees, occupants and users or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Concessionaire, it's agents, licensees, occupants and users of the Premises, and Concessionaire agrees to indemnify and hold Owner harmless from such liability.

Should Owner be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Concessionaire in connection with or arising out of an event covered by this indemnification provision, Concessionaire shall pay and/or otherwise compensate Owner for Owner's costs and expenses incurred in such suit, action or demand without limitation. The Concessionaire shall give reasonable notice to Owner of any such claims or actions. The Concessionaire shall, in writing, notify Owner of the counsel to be used in carrying out its obligations herein. Owner shall be entitled to object to the use of said counsel and shall give reasonable notice of an objection regarding the use of said counsel. Further, Concessionaire's agreement to indemnify Owner is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Concessionaire pursuant to the provisions of this Agreement. The provisions of the paragraph shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Agreement.

Concessionaire hereby agrees with Owner that Owner shall not be liable for damage to the property of Concessionaire, Concessionaire's employees, agents, licensees, occupants and users, or any other person in or about the Premises at the request, or with the permission of

Concessionaire. Further, the parties agree that Owner shall not be liable for any damages arising from any act or neglect of any other tenant of Owner.

14. Liability Insurance. Concessionaire shall maintain at its expense a policy of public liability insurance, covering Concessionaire's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Owner as an additional insured and protecting Owner and Concessionaire against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities relating to or arising out of Concessionaire's occupation and use of the Premises, with limits of at least $2,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Owner not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense**,** subject to policy terms, conditions, limitations and exclusions. With respect to the coverages required in this paragraph, the parties agree that Concessionaire's policy or policies shall be primary to any other valid and collectible insurance available to Owner.

The above-required insurance shall be with an insurance carrier, or insurance carriers, satisfactory to Owner and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Owner. Notice shall only be provided if the insurance company cancels or alters the policy affecting the requirements of Owner. Concessionaire shall provide Owner with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Owner.

Concessionaire shall also, without cost to the Owner, maintain during the term hereof automobile liability insurance in accordance with the terms and conditions of its automobile rental agreements, covering the operation of rental automobiles hereunder. All such general liability insurance and automobile liability insurance shall provide liability limits of not less than $1,000,000.00 on account of personal injury, death or property damage or other loss as a result of any one occurrence or accident, regardless of the number of persons injured or number of claimants. Concessionaire shall provide Owner certificates evidencing all such insurance and containing a provision that the policies cannot be canceled or amended without giving the Owner ten (10) days prior written notice.

15. Concessionaire's Property. All personal property, including trade fixtures, owned or leased by Concessionaire and used upon the Premises, shall be at the risk of Concessionaire.

16. Owner's Right to Terminate. Owner shall have the right to terminate this Agreement upon ten (10) days prior written notice to Concessionaire, upon or after the happening of one or more of the following events:

(a) If Concessionaire shall make a general assignment for the benefit of creditors;

(b) If Concessionaire shall file a voluntary petition in bankruptcy or a petition seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any similar state laws;

(c) If any involuntary petition in bankruptcy shall be filed against Concessionaire and Concessionaire is thereafter adjudicated a bankrupt thereunder;

(d) If Concessionaire shall consent to the appointment of a receiver, trustee, or

liquidator of all or substantially all of the property of Concessionaire;

(e) If Concessionaire shall voluntarily abandon and discontinue its automobile rental service at the Airport for a period of sixty (60) consecutive days, or if Concessionaire shall abandon its Premises in the Airport for a period of sixty (60) days;

(f) If Concessionaire shall fail to pay the rental charges or other money payments required by this Agreement and such failure shall not be remedied within thirty (30) days following receipt by Concessionaire of written demand from the Owner to do so; or,

(g) If Concessionaire shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it hereunder and shall fail to commence with due diligence to remedy the default within thirty (30) days following receipt by Concessionaire of written demand from the Owner to do so.

In the event of termination of this Agreement by the Owner for any of the reasons specified above, Concessionaire shall have thirty (30) days within which to remove all trade fixtures and personal property installed in or upon the premises by Concessionaire.

17. Concessionaire's Right to Terminate. Concessionaire shall have the right to terminate this Agreement upon ten (10) days prior written notice to Owner, upon the happening of one or more of the following events:

(a) The issuance by any court of competent jurisdiction of an injunction, order or decree preventing or restraining the use of the Airport for normal airport purposes or the use of any part thereof which may be used by Concessionaire and which is necessary for Concessionaire's operations on the Airport, or preventing Concessionaire from operating an automobile rental business, which remains in force for a period of at least thirty (30) days;

(b) If the Owner shall default in fulfilling any of the terms, covenants or conditions to be fulfilled by it under this Agreement and shall fail to cure said default within thirty (30) days following receipt of written demand from Concessionaire to do so;

(c) If all or a material part of the Airport or Airport facilities shall be destroyed by fire, explosion, earthquake, other casualty, or acts of God or the public enemy;

(d) If the United States Government or any of its agencies shall occupy the Airport or any substantial part thereof to such an extent as to interfere materially with Concessionaire's operations for a period of thirty (30) consecutive days or more;

(e) Permanent abandonment of the Airport as an air terminal.

18. Duties Upon Termination. Upon the expiration or earlier termination of this Agreement, Concessionaire shall promptly remove or cause to be removed at Concessionaire's expense from the Premises and the Facility any signs, notices and displays, furniture, trade fixtures and personal property on, installed in or upon the Premises by Concessionaire and surrender the Premises in broom clean, first-class condition, ordinary wear and tear excepted. In default of such removal by Concessionaire, all such property, and every interest of Concessionaire in the same, shall be conclusively presumed to have been conveyed by Concessionaire to Owner under this Agreement as a bill of sale without compensation, allowance or credit to Concessionaire. All Concessionaire's improvements or additions to the Premises that cannot be removed without damage to the Premises shall be deemed the Owner's property; provided, however, that Owner may elect prior to the termination of the Agreement, or within ten (10) days thereafter, to require Concessionaire to remove any installation or addition at Concessionaire's expense.

19. Licensee May Fulfill Concessionaire's Obligations. The parties agree that any and all obligations of Concessionaire hereunder may be fulfilled or discharged either by Concessionaire or by a licensee member of the Concessionaire, duly appointed thereto by the Concessionaire, and that any and all privileges of every kind granted Concessionaire hereunder may extend to and be enjoyed by such licensee so appointed, provided, however, that notwithstanding the method of operation employed by Concessionaire hereunder, Concessionaire shall continue always to remain directly liable to the Owner for the performance of all terms and conditions of this Agreement. Except as hereinabove set out, the right to occupy the Premises occupied by Concessionaire hereunder may not be sublet, in whole or part, and Concessionaire shall not assign this Agreement, nor permit any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation, without prior written consent of the Owner.

20. Default and Forfeiture. Time and the strict and faithful performance of each and every one of the conditions of this lease is expressly made the essence of this Agreement. If default be made by the Concessionaire in payment of any part of Concessionaire's rent when the same shall become due, or default be made by the Concessionaire in keeping, performing or observing any of the covenants and agreements herein contained and such default shall remain so for a period of thirty (30) days after written notice shall have been sent by certified mail to Concessionaire as hereinafter provided, then in such event the Owner may, at Owner' election, either in law or equity, seek performance of this Lease or may declare said term and lease forfeited and ended and re-enter said demised Premises to repossess and enjoy the same, and the effect of such default shall, at the election of Owner, without further notice or demand, constitute a forfeiture and termination of this lease. If the Concessionaire shall fail to surrender possession of the demised Premises to Owner, the Concessionaire shall be deemed guilty of an unlawful and forcible detention of said Premises. If the property is abandoned by Concessionaire in conjunction with an event of default, then termination shall be automatic and without notice. If Concessionaire shall abandon or vacate said Premises, or if this Lease be terminated for breach of any of the covenants and agreements herein contained, Concessionaire hereby agrees to pay all reasonable expenses incurred by Owner in obtaining possession of said Premises from Concessionaire, including reasonable attorney's fees, and to pay such other expenses as the Owner may incur in putting the Premises in good order and condition as herein provided, normal wear and tear excepted, and also to pay all other reasonable and necessary expenses or commissions paid by Owner in releasing the Premises. In the event of notification of default by Owner to Concessionaire and Concessionaire does in fact cure such default, then and in that event Concessionaire shall pay, in addition to all arrearages existing, all reasonable attorney's fees and costs incurred by Owner in determination of the default and the notification to the defaulting Concessionaire.

If Concessionaire shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any consecutive twelve-month-period during the term hereof, then such conduct shall, at the election of Owner, represent a separate event of default which cannot be cured by Concessionaire. Concessionaire acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Owner and deprive it of timely performance by Concessionaire hereunder.

21. Condemnation. In case of a taking by eminent domain ("Taking"), other than for

temporary use, of either (a) the entire Premises, or (b) such a substantial part of the Premises as shall have the result that the portion of the Premises remaining after such Taking (even if restoration were made) will be economically unsuitable for the use of the Premises for purposes described in Paragraph 4, this Agreement shall terminate as of the date of the transfer of possession to the condemning authority. In the case of a total taking, the entire amount of any condemnation award shall be paid to and retained by Owner, and Concessionaire shall have no right or claim with respect thereto.

In the event of a taking of a portion of the Premises that is not a total taking, then and in that event this Lease shall remain in full force and effect as to the portion of the Premises remaining immediately after such taking and rent shall be reduced on a square footage basis at the then applicable rental rate provided for in Paragraph 6 of this Agreement. The entire amount of any condemnation award for a taking of a portion of the Premises shall be paid to and be retained by Owner.

Neither the execution of this Lease nor any provision of this Lease shall affect in any way Owner's right to condemn the Premises herein granted under its power of eminent domain.

22. Inconvenience during Construction. Lessee recognizes that from time to time during the term of this Lease it will be necessary for Lessor to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance, and repair may inconvenience or interrupt operations at the Airport. Lessee agrees that no liability shall attach to Lessor, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconveniences or interruption, and for and in further consideration of the premises, Lessee waives any right to claim damages, provided, however, that this waiver shall not extend to, or be construed to be a waiver of, any claim for physical damage to property resulting from Lessor's negligence or willful misconduct.

23. No Partnership. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, or employment relationship between Owner and Concessionaire. Neither Owner nor Concessionaire shall be liable, except as otherwise expressly provided in this Agreement, for any obligations or liabilities incurred by the other. Concessionaire expressly agrees to indemnify and hold Owner, and the property of the Owner, including the Premises, free and harmless from any and all obligations and liabilities incurred by Concessionaire in conducting its activities on the Premises. Concessionaire shall at all times be regarded as a tenant and shall not at any time act as agent for the Owner.

24. Nondiscrimination.

(a) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants

and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Concessionaire shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants Owner shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Concessionaire hereby authorizes Owner to take such action as the Federal Government may direct to enforce this covenant, and Concessionaire also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(c) Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

25. <u>Disadvantaged Business Enterprise Participation</u>. The Concessionaire shall be required to take all necessary and reasonable steps to achieve an Airport Concessions Disadvantaged Business Enterprise (hereinafter "ACDBE") goal as set by Owner from time to time throughout the remaining term of this Agreement. This goal shall be measured as a percentage of the Concessionaire's expenditures in relation to its operations under this agreement. The ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Part 23 and shall be counted toward the goal as set forth in those regulations.

The Concessionaire shall be required to comply with other appropriate provisions of 49 CFR Part 23 implementing Sections 511 (h) of the AAIA. The Concessionaire shall submit the following reports to Owner in the form specified by Owner for the purpose of demonstrating compliance with this paragraph:

1. Concessionaire agrees that within sixty (60) days of the end of each calendar ear of the Term of this Agreement, it will provide a report to Owner, in a form acceptable to

Owner, an annual statement setting forth all such ACDBE gross receipts for such year in accordance with the requirements of 49 CFR Part 23. (See Exhibit C).

2. Concessionaire agrees that it will also submit within the same periods described in paragraph 1 above a report to the Airport, in a form acceptable to Owner, describing the Concessionaire's total gross receipts for the year of the term as provided in paragraph 1 above and in the case of a rental car concession, also the total dollar value of vehicles and/or other goods and services purchased by the Concessionaire for each year of the Term of this Agreement. This report shall include any ACDBE or DBE participation for the year.

3. Concessionaire will have no right to terminate an ACDBE for convenience without Owner's prior written consent. If an ACDBE is terminated by the Concessionaire with Owner's consent or because of the ACDBE's default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 CFR section 23.25(d)(1)-(3) and (5)-(7), and 49 CFR section 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.

The Concessionaire's breach of its obligations under (1), (2) or (3) above shall be a default by Concessionaire under Section 20 and shall entitle Owner to exercise all its contractual and legal remedies, including termination of this Agreement.

Concessionaire agrees that Owner may review its records and on-site concessions on a (monthly/quarterly/annual) basis for compliance with all ACDBE law, rules, and regulations.

Concessionaire agrees to otherwise comply with all ACDBE laws, rules, and regulations, and to assist Owner with Owner's ACDBE Program Plan as specified herein and pursuant to 49 C.F.R. Part 23.

26. **Notices.** All notices or demands provided for or which may be given either party to the other under the terms of this Agreement shall be in writing, signed by the party giving the notice or making the demand, and shall be deemed served or delivered upon physical delivery or upon deposit in the United States mail, registered, return receipt requested, postage and

registration fees prepaid, addressed as follows:

Owner: JOSLIN FIELD, MAGIC VALLEY REGIONAL AIRPORT
Attention: Airport Manager P.O. Box 1907
Twin Falls, Idaho 83303-1907

Concessionaire: ENTERPRISE RENT-A-CAR COMPANY
OF UT,LLC
7144 S State St
Midvale, UT 84047

or to such other address as the addressee may designate by written notice to the other party delivered in accordance with the provisions of this paragraph.

27. Compliance With Law. Concessionaire agrees to comply with all municipal, state and federal laws, rules, regulations and ordinances. Concessionaire further agrees to comply with all current Joslin Field, Magic Valley Regional Airport Rules and Regulations, now in existence, or as may hereafter be amended during the term of this Agreement. By signing this Agreement, Concessionaire acknowledges receipt of a current copy of the Airport Rules and Regulations.

(a) Lessee further agrees to abide by reasonable rules and regulations adopted by the Airport in carrying out the Airport's obligations under the Federal Aviation Administration and Transportation Security Administration regulations and other security measures the Airport deems necessary from time to time, for the proper identification of persons and vehicles entering the aircraft operations area all as the same may be added to or modified by the Federal Aviation Administration or Transportation Security Administration.

28. Subordination of Agreement. The parties agree that this Agreement is subject and subordinate to the terms, reservations, restrictions, provisions and conditions of any existing or future agreement between the Owner and the United States of America, or the Owner and the state of Idaho, relative to the development, operation or maintenance of the Magic Valley Regional Airport and appurtenant facilities, the execution of which has been or may be required as a condition precedent to the participation by any Federal Agency or the expenditure of federal or state funds for the extension, expansion or development of said Airport and related facilities.

29. Right of Inspection. Owner reserves the right to inspect the Premises to ensure compliance with this Agreement.

30. Waiver. Waiver of a breach of any provision of this Agreement by any party in any particular instance shall not be deemed a waiver of any other breach of this Agreement.

31. Attorney's Fees. In the event a dispute should arise between the parties relating to this Agreement, whether or not a lawsuit is ever filed, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in such dispute, and in any bankruptcy or appeal proceeding.

32. **Entire Agreement**. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter hereof and may not be modified except in writing signed by both parties.

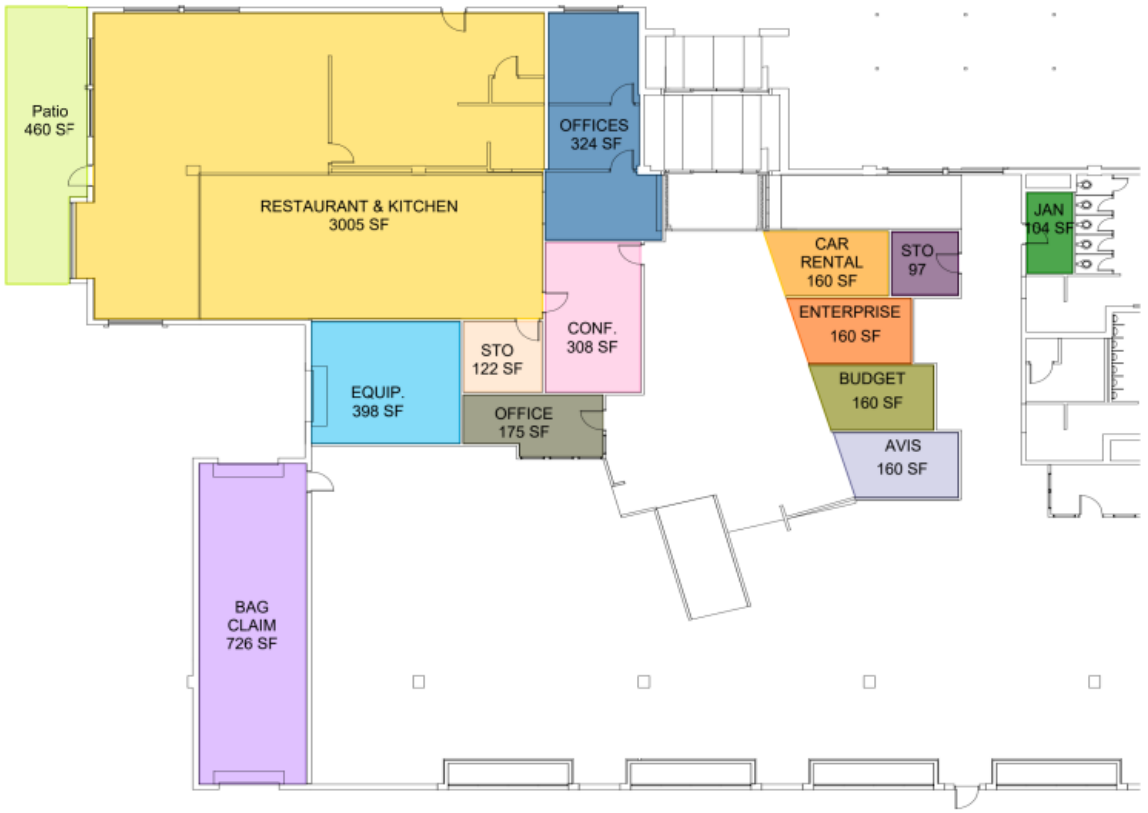
OWNER
CITY OF TWIN FALLS, IDAHO

By_____
Ruth Pierce- Mayor

CONCESSIONAIRE
ENTERPRISE RENT-A-CAR COMPANY
OF UT, LLC

By_____
Mike DiOrio - Vice President/General Manager
Enterprise Rent - A - Car Company of UT, LLC

MAGIC VALLEY REGIONAL AIRPORT TENANT LEASE SPACES



CSHQA

Exhibit A

AUTOMOBILE CONCESSION AGREEMENT EXHIBIT B

EXHIBIT "C"

ACDBE ANNUAL ATTAINMENT REPORT

FY2024 Reporting

1 Name of Recipient: Magic Valley Regional Airport

2 Contact Information

Preparer's Name:
Phone Number:
Email Addresss:

3 FY 2024

4 Current Car Rental ACDBE Goal — RC 0.00% RN 0.23%

Car Rental ACDBE Goal is based on:

- [x] Gross Receipts
- [ ] Goods and Services Purchased
- [ ] Not Required

5 Car Rental Cumulative ACDBE Participation

	Total Dollars	Total Number	Total to ACDBEs (#)	Total to ACDBEs / RN ($)
Prime Concessions				
Subconcessions				
Goods and Services				

6 Car Rental New ACDBE Participation This Period

	Total Dollars	Total Number	Total to ACDBEs (#)	Total to ACDBEs / RN ($)
Prime Concessions				
Subconcessions				
Goods and Services				

7 Cumulative ACDBE Participation by Race/Gender

Car Rental

Black Americans — No. / Dollars: — Names of ACDBE Firms:

Hispancis American — No. / Dollars: — Names of ACDBE Firms:

Asian-Pacific Americans — No. / Dollars: — Names of ACDBE Firms:

Asian-Indian Americans — No. / Dollars: — Names of ACDBE Firms:

Native Americans — No. / Dollars: — Names of ACDBE Firms:

Non-Minority Women — No. / Dollars: — Names of ACDBE Firms:

Others — No. / Dollars: — Names of ACDBE Firms:

Percentage of ACDBE Participation: _____
ACDBE Goal: 0.23%
ACDBE Goal Met: _____

If the ACDBE Goal was not met, please provide detailed explanation of efforts made to attract qualified ACDBE participants and reasons for the deficiency:

I certify that the above information is true and accurate to the best of my knowledge and accurately reflects our ACDBE participation and good faith efforts during the period indicated.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request:

Consideration of a request to authorize the mayor to sign a car wash service area agreement renewal with Avis/Budget car rental.

Background:

Avis/Budget car rental has shared a car wash-bay service area agreement for many years to support their car rental operation. The area is used to help maintain the rental car return operation to clean and service cars for the next rental customer. This agreement is a ground lease agreement. The operation includes a service garage which was built by the Avis/Budget company several years ago.

Approval Process:

A majority vote of the City Council is needed to approve the request.

Budget Impact:

The approval will allow for the airport to renew the agreement and receive ground lease rental payments from the car rental company.

Regulatory Impact:

The airport's ground lease agreements are prepared by the City Attorney and terms of the agreement are wide ranging in the requirements to protect the interests of both parties. The agreements are also subordinate to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion:

Staff recommends the City Council approve the request to authorize the mayor to sign car wash service area agreement renewal with Avis/Budget car rental.

Attachments: Avis/Budget car rental service area agreement.

CAR RENTAL SERVICE AREA AGREEMENT

THIS CAR RENTAL SERVICE AREA AGREEMENT ("Lease") is made effective the 1st day of October 2024, by and between the **CITY OF TWIN FALLS**, hereinafter referred to as "Lessor," and **BUDGET RENT A CAR SYSTEM, INC.** and **AVIS RENT A CAR SYSTEM, LLC**, hereinafter referred to as "Lessee."

The parties hereto agree as follows:

1. Description of Property. In consideration of the rental specified below, the Lessor hereby leases to the Lessee the below-described property, hereinafter called the "Premises":

Block 9, Lot 1 consisting of 8,218 square feet at Joslin-Field – Magic Valley Regional Airport ("Airport"), as depicted on Exhibit A attached hereto.

2. Inspection of the Premises. Lessee acknowledges and agrees that it has inspected the Premises, is thoroughly familiar with its condition and accepts the Premises in its present condition, and further acknowledges and agrees that Lessor has not made, and does not hereby make, any representations, warranties, or covenants of any kind or character whatsoever with respect to the condition of the Premises, either express or implied, and, in addition, Lessee hereby represents that it is not relying on any warranties, promises, guaranties, or representations made by Lessor or anyone acting or claiming to act on behalf of Lessor in leasing the property. Lessee is satisfied with the condition of the property and leases the Premises "AS IS" for all purposes, including all unknown environmental problems and latent defects

3. Use of Premises. Lessee may use and occupy the leased Premises solely for the purpose of operating an automobile rental service facility which includes the fueling, washing, parking and storing of Lessee's rental fleet of automobiles. The Premises shall not be used for the storage of any vehicles, equipment or materials not required for the provision of the above described activities or for any other purpose.

4. Right of Access. Lessee shall have the right of ingress and egress to the Premises by way of access roads in common with others, pursuant to applicable FAA rules and regulations and rules and regulations promulgated by Lessor. Lessee hereby agrees not to use the access roads in such a manner as to obstruct or prevent others from the right of use or travel.

5. Term of Lease. The term of this Agreement shall commence on October 1, 2024 and end on September 30, 2029. In the event Lessee shall continue to occupy the leased Premises beyond the term of the Lease, continued occupancy of the Premises by Lessee shall not constitute a renewal or extension of the Lease, but shall create a tenancy from month to month on the same terms and conditions of the expired term, which tenancy may be terminated at any time by Lessor giving thirty (30) days written notice to Lessee.

6. Rent.

(a) Initial Rent. Rent for the period October 1, 2024 through September 30, 2025 shall be at the rate of $0.198 per square foot, for an annual rent of $1,627.16 to be paid in advance on the first day of October, 2024.

(b) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2024 shall be $0.198 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-

U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2024was calculated as follows:

Annual CPI-U Index for 2023		304.702
Less Annual CPI-U Index for 2022		292.655
Change in Annual Index		12.047
Divided by Annual Index for 2022	292.655	
Equals		.0411
Which is a percentage change of		4.1%
Prior rent (effective 10/1/2023)		0.190
Multiplied by current percentage change	4.1%	.00779
New rent (effective 10/1/2024)		**0.198**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

In the event that the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

7. Outside Storage. Outdoor storage of any equipment or materials must be specifically approved by Lessor, which approval shall not be withheld unreasonably. Storage of such items may be required to be in a fenced enclosure; screening may also be required. In all events such storage shall comply with all City and County fire codes and National Fire Protection Association Standard 409. All personal property on the Premises shall be at the risk of Lessee.

8. Utilities. During the term of this Lease, Lessee agrees to pay for all water, electricity and other utilities used in or about said Premises.

9. Premises Improvements.

A. Maintenance. Lessee shall have sole responsibility for maintenance of the Premises. Lessee shall keep and maintain the Premises and all improvements thereon, in good and substantial repair and condition, including the exterior thereof, and shall make all necessary repairs and alterations thereto. Lessee further agrees to repair at its sole cost and expense any airport-related property that is damaged by Lessee in maintaining or operating on the Premises.

Lessee shall keep and maintain the Premises in a neat and orderly condition as determined in the sole discretion of Lessor. Lessee shall provide appropriate, covered, commercial type containers for trash and garbage, and will maintain these receptacles, screened from view from adjoining properties in an attractive, safe and sanitary manner. Further, Lessee shall keep the Premises free and clear of rubbish, debris, litter and weeds. In the event that Lessor determines that Lessee has failed to comply with the terms of this paragraph, Lessor may, but shall have no obligation to, take such action as is required by this paragraph, and charge Lessee the actual cost incurred to comply with this paragraph or a reasonable fee for the services.

Lessee shall not permit parking on the Premises unless the parking areas have been excavated to the proper sub grade and backfilled with an amount of gravel as specified by Lessor. Lessee shall keep the Premises in good maintenance and repair, and further agrees to

repair at his sole cost and expense, all property, ground, runways, taxiways, and any and all property belonging to Lessor, that is damaged by Lessee in maintaining or operating on the Premises.

Snow removal on the Premises is the sole responsibility of Lessee. Snow removal may be performed by Lessor as a courtesy to Lessee on a fee or non-fee basis unless Lessee instructs Lessor in writing that Lessee does not desire to have Lessor remove snow. Lessor may cease to provide snow removal to Lessee or snow removal may not be provided on a particular occasion at Lessor's sole discretion.

In the event that Lessee's personal property is damaged by Lessor's equipment or personnel, Lessor agrees to pay Lessee for the damages incurred.

B. Construction. Lessee shall not alter, replace, demolish or add to existing facilities or construct new facilities on the Premises, or make any contract therefor, without first demonstrating compliance with the Airport Development Guidelines in effect or as hereinafter adopted and procuring Lessor's written consent.

In the event that Lessee desires to alter, replace, demolish, or add to existing improvements or construct new improvements on the Premises, all alteration, replacement, demolition, addition or new improvement final plans and specifications, site-use plans and architectural renderings thereof shall be submitted to, and approved by Lessor, and the Federal Aviation Administration, if applicable, prior to the commencement of any construction. Demolition and construction of the alterations, replacements or additions to existing improvements must be substantially completed within one (1) year of the date of Lessor's approval and fully completed within eighteen (18) months of the date of Lessor's approval. The demolition of existing buildings and all alterations, replacements, additions and new facilities shall comply with the laws and ordinances relating thereto. All work with respect to any alterations, additions, or new improvements must be done in a good and workmanlike manner and diligently prosecuted to completion. Lessee shall see to it that such construction shall not cause dust outside the Premises or be a nuisance to any other Lessees.

C. Damage or Destruction of Premises Improvements. All personal property, including buildings and structures, on the Premises, shall be at the risk of Lessee. If any improvement upon the Premises is damaged or totally destroyed, Lessor shall give Lessee written notice of such damage or destruction. Lessee shall commence repair or restoration of the improvement within six (6) months from the date of such notice and complete the repair or restoration within one (1) year from the date of such notice. If Lessee fails to comply with the terms of this paragraph, Lessor shall have the option of demolishing the damaged or destroyed improvement at the expense of Lessee.

D. Relocation or Removal of Improvements. Lessor, in its sole discretion, reserves the right to further develop or improve the Airport facilities and property, including the right to cause any structure or improvement to be removed or relocated on the Airport, as Lessor sees fit, to take any action Lessor considers necessary to protect the instrument approaches of the Airport against obstructions, to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessor would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event Lessor elects to have a structure or improvement owned by Lessee removed or relocated, Lessor shall give Lessee six (6) months prior notice and offer Lessee an alternate site if in the opinion of Lessor a suitable site is available on Airport property. If no alternate site is offered or Lessee chooses not to relocate, this Lease may be terminated by either party.

If Lessor exercises its right under this paragraph to cause Lessee to remove its building from the Premises and relocate it to another location, Lessor agrees to pay Lessee the cost of relocating the building. If Lessor causes Lessee to remove its building from the Airport, Lessor agrees to pay Lessee the fair market value of Lessee's building, at which time the building shall become the property of Lessor.

10. Liens. Lessee shall keep the Premises free and clear of all liens, mortgages and encumbrances of any kind in any way arising out of the occupation of the Premises by Lessee.

11. Taxes and Assessments. Lessee shall pay all assessments of any kind levied against the above demised Premises during the term of this Lease. Further, Lessee shall promptly pay any personal property taxes and assessments of any kind levied against Lessee's personal property as the same becomes due.

12. Fire Hazards. Lessee shall not do anything on the Premises or bring or keep anything thereon that will increase the risk of fire, or which will conflict with the regulations of the Twin Falls City Fire Department.

13. Waste Prohibited. Lessee shall not commit any waste or damage to the Premises hereby leased nor permit any waste or damage to be done thereto.

14. Compliance With Law. Lessee agrees to comply with all Municipal, State and Federal laws, rules, regulations and ordinances. Lessee further agrees to comply with all current Joslin Field - Magic Valley Regional Airport Rules and Regulations, Minimum Standards, and applicable sections of the Airport Security Plan now in existence, or as hereafter adopted and/or amended during the term of this Lease. By signing this agreement, Lessee acknowledges receipt of a current copy of the Airport Rules and Regulations.

15. Indemnity - Hazardous Substances. Lessee shall not engage, and shall not permit its employees, agents, subtenants, assignees or others under its control to engage, in an operation on the Premises or related airport facilities that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of "hazardous substances" or "hazardous wastes," without the prior written consent of Lessor, which may be withheld or granted in Lessor's sole discretion.

As used herein, the term "hazardous substance" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state of Idaho or the United States government. The term "hazardous material" includes, without limitation, any material or substance that is (i) defined as a hazardous or toxic substance under any city, county, state or federal law, regulation or ordinance, (ii) oil and petroleum, and products thereof, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1321), (v) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. section 6901, et seq.); (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. section 6991, et seq.); (vii) defined as a ""hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. section 9601 et seq.), as such laws, regulations and ordinances may be amended from time to time and including all regulations promulgated pursuant thereto. The term "environmental law(s)" as used herein shall include, without limitation, the foregoing listed laws, regulations and ordinances and state analogs of such laws.

Lessee shall indemnify, defend and save Lessor harmless from all cleanup costs, investigation and monitoring costs, costs to provide alternative sources of drinking water to

neighbors, property damage costs, injury/health-related costs, litigation costs (including, but not limited to attorney's fees, accountant's fees, consultant's fees, costs on appeal, expert witness costs), losses and damages related to third parties, all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes by Lessee, its agents, licensees, subtenants or assignees and others under Lessee's control, in or about the Premises and related airport facilities or arising under or on account of any environmental law or similar applicable laws or regulations that occur during the term of this Lease, and from all fines, suits, procedures, claims and actions of any kind arising out of Lessee's failure to provide all information and take all actions required by any Federal, state or local authority, or arising out of Lessee's failure to cause its agents, licensees, subtenants, assignees or others under Lessee's control to do the same. Lessee's obligations and liabilities under this paragraph shall survive the expiration or sooner termination of this Lease and continue so long as Lessor remains responsible for any spills or discharges of hazardous substances or wastes in or about the Premises that occur during the Term.

16. Care of Petroleum Products and Other Material by Lessee. Lessee shall handle, use, store and dispose of petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it on the Airport in accordance with all applicable federal, state, local and Airport Rules and Regulations. Lessee shall, at Lessee's own expense, comply with, and cause its agents, licensees, subtenants, assignees and others under Lessee's control on the Premises and related airport facilities to comply with, all local and state environmental laws, rules and regulations, the Comprehensive Environmental Response, Compensation & Liability Act (42 U.S.C. § 9601 *et seq.*), and all other applicable federal laws, rules and regulations, and any and all amendments thereto, or hereafter promulgated.

Lessee shall not cause or suffer to occur, a release, discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substance as defined in Paragraph 15 at, upon, under or within the Premises, or related airport facilities, including the storm sewer, or any contiguous real estate. Lessee shall not permit its agents, licensees, subtenants, assignees or others under its control on the Premises and related airport facilities to engage in any activity that could lead to the imposition of liability under any environmental laws or similar applicable laws or regulations. Should "hazardous substances" and/or "hazardous wastes" be released, spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, its agents, licensees, subtenants, assignees or others under Lessee's control on the Premises or related airport facilities, Lessee shall be responsible for the cleanup, containment and abatement of such contamination at Lessee's sole cost and expense. Should the Lessee fail to do so, Lessor, at its option, but without obligation, may take any reasonable and appropriate action in Lessee's stead. Lessee shall pay the cost of such remedial action upon delivery to Lessee of an itemization of the costs incurred.

Lessee shall comply strictly and in all respects with the requirements of all applicable environmental laws and with all similar applicable laws and regulations and shall notify appropriate governmental agencies, Lessor and the Airport Manager promptly in the event of any spill or release, or hazardous substance upon the Premises or related airport facilities and shall promptly forward to Lessor and the Airport Manager, copies of all orders, notices, permits, applications, or other communications and reports in connection with any such spill or release, or any other matters relating to environmental laws or related regulations or any similar applicable laws or regulations, as they may affect the Premises.

17. Hold Harmless. Lessee shall indemnify and hold Lessor and the property of the Lessor, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Lessor's sole negligence or willful misconduct, resulting from Lessee's occupation and use of the Premises and related Airport facilities at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Lessee's occupation and use of the Premises at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Lessee's improvements or personal property in or on the Premises or Airport-related facilities, or the acts or omissions of any person in or on the Premises or Airport-related facilities with the express or implied consent of the Lessee including but not limited to the Lessee, its employees, agents, licensees, subtenants, assignees, occupants and users of the Premises. Provided however, Lessee shall have no obligation to indemnify and hold Lessor harmless for claims, liability, loss, damage or expense directly resulting from Lessor's negligence or willful misconduct except by way of liability insurance required in paragraph 18. Lessor shall not be liable for any personal injury or property damage which may be sustained by Lessee, its employees, agents, licensees, subtenants, assignees, occupants and users or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Lessee, its agents, employees, licensees, subtenants, assignees, occupants and users of the Premises, and Lessee agrees to indemnify and hold Lessor harmless from such liability.

Should Lessor be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Lessee in connection with or arising out of an event covered by this indemnification provision, Lessee shall pay and/or otherwise compensate Lessor for Lessor's costs and expenses incurred in such suit, action or demand without limitation. The Lessee shall give reasonable notice to Lessor of any such claims or actions. The Lessee shall, in writing, notify Lessor of the counsel to be used in carrying out its obligations herein. Lessor shall be entitled to object to the use of said counsel and shall give reasonable notice of an objection regarding the use of said counsel. Further, Lessee's agreement to indemnify Lessor is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessee pursuant to the provisions of this Agreement. The provisions of the paragraph shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Agreement.

Lessee hereby agrees with Lessor that Lessor shall not be liable for damage to the property of Lessee, Lessee's employees, agents, licensees, subtenants, assignees, occupants and users, or any other person in or about the Premises at the request, or with the permission of Lessee. Further, the parties agree that Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

18. Insurance. At all times during the term of this Lease, Lessee shall maintain, at its expense, a policy of public liability insurance covering Lessee's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Lessor as an additional insured and protecting Lessor and Lessee against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities relating to or arising out of Lessee's occupation and use of the Premises, with limits of at least $1,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Lessor not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense**,** subject to policy terms, conditions, limitations and

exclusions. With respect to the coverages required in this paragraph, the parties agree that Lessee's policy or policies shall be primary to any other valid and collectible insurance available to Lessor.

The above required insurance shall be maintained with an insurance carrier, or insurance carriers, satisfactory to Lessor and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor. Lessee shall provide Lessor with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Lessor.

Lessee, as an owner and/or operator of fuel storage tanks on the leased Premises, shall at its sole cost and expense, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, liability insurance from the Idaho State Insurance Fund under Title 41 Chapter 49 Petroleum Clean Water Trust Act and shall list the Lessor as additional insured. Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's compliance with the requirements of this paragraph.

19. Events of Default. Time and the strict and faithful performance of each and every one of the terms, covenants and conditions of this Lease is expressly made the essence of this agreement.

The following shall constitute a default of the Lease:

A. failure of Lessee to pay rent or any other charge within thirty (30) days after the same is due,

B. failure of Lessee to comply with any term, covenant or condition of the Lease, other than as specified in Paragraph 15. above, within thirty (30) days after written notice by Lessor to Lessee specifying the nature of the term, condition or obligation breached,

C. abandonment of the Premises; or,

D. termination of, or default on, the Automobile Concession Agreement effective October 1, 2024.

B. Remedies upon Default. If default be made by Lessee, Lessor may, at Lessor's election, either in law or equity, seek performance of the term, condition or obligation of this Lease or without further notice or demand, declare said Lease terminated and re-enter said demised Premises to repossess and enjoy the same.

C. Damages. In the event of termination, Lessor shall be entitled to recover as damages the reasonable costs of re-entry and reletting, including without limitation the reasonable attorney's fees and costs incurred to regain possession of the Premises, the cost of any clean up, refurbishing, removal of Lessee's improvements, fixtures and personal property, and to pay all other reasonable and necessary expenses or commissions paid by Lessor in re-leasing the Premises.

D. Cure. In the event of notification of a breach of any term, condition or obligation by Lessee and Lessee does in fact cure such breach, then and in that event Lessee shall pay all reasonable attorney's fees and costs incurred by Lessor in determination of the breach and notification of the breach to Lessee. If Lessee shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any consecutive twelve-month-period during the term of this lease, then such conduct shall, at the election of Lessor, represent a separate event of default which cannot be cured by Lessee. Lessee acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Lessor and deprive it of timely performance by Lessee hereunder.

20. **Termination**. In addition to the right to terminate this Lease as provided in Paragraph 19, Lessor shall have a right to terminate this Lease upon thirty (30) days written notice for any of the following reasons:

A. If Lessor determines that the Premises is necessary or required for developing or maintaining the Airport or Lessor determines in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, to construct, repair, alter, develop or improve Magic Valley Regional Airport – Joslin Field, including but not limited to the buildings, parking, lighting, runways, airspace designation, which alteration, development or improvement is impaired by, or prevents or prohibits Lessee's permitted uses on the leased Premises.

B. If any federal, state or local court or authority mandates a change in the operations of the Airport facility which prohibits Lessee's permitted uses on the leased Premises.

C. The permanent abandonment of the Airport as an air terminal.

D. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as substantially to interfere with Lessee's use and enjoyment of the Premises for a period of at least ninety (90) days.

E. To terminate or amend this Lease to bring it into compliance with any requirements of the state of Idaho or the federal government to obtain or retain eligibility for government loans, grants, aid or funding.

F. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

The parties agree that Lessor shall have no liability to Lessee for damages or costs incurred by Lessee if termination of this Lease occurs under this paragraph.

21. **Lessee's duties upon Termination or Expiration.** Upon the termination or expiration of this Lease, Lessee agrees to do the following:

A. Lessee's Personal Property. Upon the termination or expiration of this Lease, Lessee agrees to remove all of Lessee's personal property, at its sole cost and expense;

B. Environmental Condition. Lessee further agrees to surrender the Premises free from environmental contamination of any kind caused by Lessee, its employees, agents, licensees, subtenants, assignees, occupants and users of the Premises during the term of this Lease.

22. **Lessee's Right To Terminate.** Lessee shall have the right to terminate this Lease upon the following events:

A. default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and Lessor's failure to cure said default within sixty (60) days after Lessee having first given Lessor written notice of the default;

B. permanent abandonment of the Airport; or,

C. a final court order prohibiting Lessee from conducting all of the permitted uses of the Premises described in this Lease.

23. **Notices.** All notices required to be given to each of the parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid and certified, return receipt requested, to the respective parties hereto at the following address:

Lessor: Joslin Field, Magic Valley Regional Airport
c/o City of Twin Falls

P.O. Box 1907
Twin Falls, Idaho 83303-1907

Lessee: BUDGET RENT A CAR SYSTEM, INC.
6 Sylvan Way
Parsippany, NJ 07054

AVIS RENT A CAR SYSTEM, INC.
6 Sylvan Way
Parsippany, NJ 07054

or to such other address as may be designated in writing and delivered to the other party. All notices given by registered or certified mail shall be deemed completed as of the date of mailing.

24. Nondiscrimination.

(a) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Concessionaire shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants Owner shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Concessionaire hereby authorizes Owner to take such action as the Federal Government may direct to enforce this covenant, and Concessionaire also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(c) Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal

property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

25. Non-exclusive Right. Nothing contained in this Lease shall be construed to grant an exclusive right to operate a car rental service area facility at the Airport.

26. Right of Inspection. Lessor reserves the right to inspect the Premises and all facilities located thereon to ensure compliance with this Lease.

27. Subordination. This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement of Lessor for federal funds for the development of the Airport.

28. Waiver. Waiver of a breach of any provision of this Lease by any party in any particular instance shall not be deemed a waiver of any other breach of this Lease.

29. Attorney's Fees. In the event that either party commences litigation in a court of law relating to this Agreement (including any appeal), the prevailing party shall be awarded its attorney fees and costs, including, but not limited to, costs for arbitrator(s), mediator(s) and expert witnesses. Should Lessee file a petition in bankruptcy, Lessee agrees to pay all of Lessor's attorney fees and costs necessitated by Lessee's filing of the petition in bankruptcy.

30. Amendment. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter. Any modifications or amendments to this agreement must be made in writing and signed by both parties, except modifications authorized under Paragraph 6 of this agreement which will become effective as provided therein.

IN WITNESS WHEREOF, Lessor and Lessee execute this Car Rental Service Area Agreement the day and year first above written.

OWNER
CITY OF TWIN FALLS, IDAHO

By_____
Ruth Pierce - Mayor

CONCESSIONAIRE
BUDGET RENT A CAR SYSTEM, INC. and
AVIS RENT A CAR SYSTEM, LLC,

By_____
Jeffrey R. Luna, Vice President, Real Estate

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request:

Consideration of a request to authorize the mayor to sign a car wash service area agreement renewal with Enterprise car rental.

Background:

Enterprise car rental has shared a car wash-bay service area agreement for many years to support their car rental operation. The area is used to help maintain the rental car return operation to clean and service cars for the next rental customer. This agreement is a ground lease agreement. The operation includes a service garage which was built by the Enterprise company several years ago.

Approval Process:

A majority vote of the City Council is needed to approve the request.

Budget Impact:

The approval will allow for the airport to renew the agreement and receive ground lease rental payments from the car rental company.

Regulatory Impact:

The airport's ground lease agreements are prepared by the City Attorney and terms of the agreement are wide ranging in the requirements to protect the interests of both parties. The agreements are also subordinate to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion:

Staff recommends the City Council approve the request to authorize the mayor to sign car wash service area agreement renewal with Enterprise car rental.

Attachments: Enterprise car rental service area agreement.

CAR RENTAL SERVICE AREA AGREEMENT

THIS CAR RENTAL SERVICE AREA AGREEMENT ("Lease") is made effective the 1st day of October 2024, by and between the **CITY OF TWIN FALLS**, hereinafter referred to as "Lessor," and **ENTERPRISE-RENT-A-CAR of UT, LLC** hereinafter referred to as "Lessee."

The parties hereto agree as follows:

1. Description of Property. In consideration of the rental specified below, the Lessor hereby leases to the Lessee the below-described property, hereinafter called the "Premises":

Block 9, Lot 4 consisting of 8,250 square feet at Joslin-Field – Magic Valley Regional Airport ("Airport"), as depicted on Exhibit A attached hereto.

2. Inspection of the Premises. Lessee acknowledges and agrees that it has inspected the Premises, is thoroughly familiar with its condition and accepts the Premises in its present condition, and further acknowledges and agrees that Lessor has not made, and does not hereby make, any representations, warranties, or covenants of any kind or character whatsoever with respect to the condition of the Premises, either express or implied, and, in addition, Lessee hereby represents that it is not relying on any warranties, promises, guaranties, or representations made by Lessor or anyone acting or claiming to act on behalf of Lessor in leasing the property. Lessee is satisfied with the condition of the property and leases the Premises "AS IS" for all purposes, including all unknown environmental problems and latent defects

3. Use of Premises. Lessee may use and occupy the leased Premises solely for the purpose of operating an automobile rental service facility which includes the fueling, washing, parking and storing of Lessee's rental fleet of automobiles. The Premises shall not be used for the storage of any vehicles, equipment or materials not required for the provision of the above described activities or for any other purpose.

4. Right of Access. Lessee shall have the right of ingress and egress to the Premises by way of access roads in common with others, pursuant to applicable FAA rules and regulations and rules and regulations promulgated by Lessor. Lessee hereby agrees not to use the access roads in such a manner as to obstruct or prevent others from the right of use or travel.

5. Term of Lease. The term of this Agreement shall commence on October 1, 2024 and end on September 30, 2029. In the event Lessee shall continue to occupy the leased Premises beyond the term of the Lease, continued occupancy of the Premises by Lessee shall not constitute a renewal or extension of the Lease, but shall create a tenancy from month to month on the same terms and conditions of the expired term, which tenancy may be terminated at any time by Lessor giving thirty (30) days written notice to Lessee.

6. Rent.

(a) Initial Rent. Rent for the period October 1, 2024 through September 30, 2025 shall be at the rate of $0.198 per square foot, for an annual rent of $1,633.50 to be paid in advance on the first day of October 2024

(b) Rent Escalation. The parties agree that rent for the Premises shall be subject to escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the base rent payment effective October 1, 2024 shall be $0.198 per square foot per year (Annual index base period for 2003 of 184.0=100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-

U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the rent payment effective October 1, 2024 was calculated as follows:

Annual CPI-U Index for 2023		304.702
Less Annual CPI-U Index for 2022		292.655
Change in Annual Index		12.047
Divided by Annual Index for 2022	292.655	
Equals		.0411
Which is a percentage change of		4.1%
Prior rent (effective 10/1/2023)		0.190
Multiplied by current percentage change	4.1%	.00779
New rent (effective 10/1/2024)		**0.198**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

In the event that the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor index in the judgment of Lessor shall be applied to calculate the annual rent payment.

7. Outside Storage. Outdoor storage of any equipment or materials must be specifically approved by Lessor, which approval shall not be withheld unreasonably. Storage of such items may be required to be in a fenced enclosure; screening may also be required. In all events such storage shall comply with all City and County fire codes and National Fire Protection Association Standard 409. All personal property on the Premises shall be at the risk of Lessee.

8. Utilities. During the term of this Lease, Lessee agrees to pay for all water, electricity and other utilities used in or about said Premises.

9. Premises Improvements.

A. Maintenance. Lessee shall have sole responsibility for maintenance of the Premises. Lessee shall keep and maintain the Premises and all improvements thereon, in good and substantial repair and condition, including the exterior thereof, and shall make all necessary repairs and alterations thereto. Lessee further agrees to repair at its sole cost and expense any airport-related property that is damaged by Lessee in maintaining or operating on the Premises.

Lessee shall keep and maintain the Premises in a neat and orderly condition as determined in the sole discretion of Lessor. Lessee shall provide appropriate, covered, commercial type containers for trash and garbage, and will maintain these receptacles, screened from view from adjoining properties in an attractive, safe and sanitary manner. Further, Lessee shall keep the Premises free and clear of rubbish, debris, litter and weeds. In the event that Lessor determines that Lessee has failed to comply with the terms of this paragraph, Lessor may, but shall have no obligation to, take such action as is required by this paragraph, and charge Lessee the actual cost incurred to comply with this paragraph or a reasonable fee for the services.

Lessee shall not permit parking on the Premises unless the parking areas have been excavated to the proper sub grade and backfilled with an amount of gravel as specified by Lessor. Lessee shall keep the Premises in good maintenance and repair, and further agrees to

repair at his sole cost and expense, all property, ground, runways, taxiways, and any and all property belonging to Lessor, that is damaged by Lessee in maintaining or operating on the Premises.

Snow removal on the Premises is the sole responsibility of Lessee. Snow removal may be performed by Lessor as a courtesy to Lessee on a fee or non-fee basis unless Lessee instructs Lessor in writing that Lessee does not desire to have Lessor remove snow. Lessor may cease to provide snow removal to Lessee or snow removal may not be provided on a particular occasion at Lessor's sole discretion.

In the event that Lessee's personal property is damaged by Lessor's equipment or personnel, Lessor agrees to pay Lessee for the damages incurred.

B. Construction. Lessee shall not alter, replace, demolish or add to existing facilities or construct new facilities on the Premises, or make any contract therefor, without first demonstrating compliance with the Airport Development Guidelines in effect or as hereinafter adopted and procuring Lessor's written consent.

In the event that Lessee desires to alter, replace, demolish, or add to existing improvements or construct new improvements on the Premises, all alteration, replacement, demolition, addition or new improvement final plans and specifications, site-use plans and architectural renderings thereof shall be submitted to, and approved by Lessor, and the Federal Aviation Administration, if applicable, prior to the commencement of any construction. Demolition and construction of the alterations, replacements or additions to existing improvements must be substantially completed within one (1) year of the date of Lessor's approval and fully completed within eighteen (18) months of the date of Lessor's approval. The demolition of existing buildings and all alterations, replacements, additions and new facilities shall comply with the laws and ordinances relating thereto. All work with respect to any alterations, additions, or new improvements must be done in a good and workmanlike manner and diligently prosecuted to completion. Lessee shall see to it that such construction shall not cause dust outside the Premises or be a nuisance to any other Lessees.

C. Damage or Destruction of Premises Improvements. All personal property, including buildings and structures, on the Premises, shall be at the risk of Lessee. If any improvement upon the Premises is damaged or totally destroyed, Lessor shall give Lessee written notice of such damage or destruction. Lessee shall commence repair or restoration of the improvement within six (6) months from the date of such notice and complete the repair or restoration within one (1) year from the date of such notice. If Lessee fails to comply with the terms of this paragraph, Lessor shall have the option of demolishing the damaged or destroyed improvement at the expense of Lessee.

D. Relocation or Removal of Improvements. Lessor, in its sole discretion, reserves the right to further develop or improve the Airport facilities and property, including the right to cause any structure or improvement to be removed or relocated on the Airport, as Lessor sees fit, to take any action Lessor considers necessary to protect the instrument approaches of the Airport against obstructions, to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Airport which, in the opinion of Lessor would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event Lessor elects to have a structure or improvement owned by Lessee removed or relocated, Lessor shall give Lessee six (6) months prior notice and offer Lessee an alternate site if in the opinion of Lessor a suitable site is available on Airport property. If no alternate site is offered or Lessee chooses not to relocate, this Lease may be terminated by either party.

If Lessor exercises its right under this paragraph to cause Lessee to remove its building from the Premises and relocate it to another location, Lessor agrees to pay Lessee the cost of relocating the building. If Lessor causes Lessee to remove its building from the Airport, Lessor agrees to pay Lessee the fair market value of Lessee's building, at which time the building shall become the property of Lessor.

10. Liens. Lessee shall keep the Premises free and clear of all liens, mortgages and encumbrances of any kind in any way arising out of the occupation of the Premises by Lessee.

11. Taxes and Assessments. Lessee shall pay all assessments of any kind levied against the above demised Premises during the term of this Lease. Further, Lessee shall promptly pay any personal property taxes and assessments of any kind levied against Lessee's personal property as the same becomes due.

12. Fire Hazards. Lessee shall not do anything on the Premises or bring or keep anything thereon that will increase the risk of fire, or which will conflict with the regulations of the Twin Falls City Fire Department.

13. Waste Prohibited. Lessee shall not commit any waste or damage to the Premises hereby leased nor permit any waste or damage to be done thereto.

14. Compliance With Law. Lessee agrees to comply with all Municipal, State and Federal laws, rules, regulations and ordinances. Lessee further agrees to comply with all current Joslin Field - Magic Valley Regional Airport Rules and Regulations, Minimum Standards, and applicable sections of the Airport Security Plan now in existence, or as hereafter adopted and/or amended during the term of this Lease. By signing this agreement, Lessee acknowledges receipt of a current copy of the Airport Rules and Regulations.

15. Indemnity - Hazardous Substances. Lessee shall not engage, and shall not permit its employees, agents, subtenants, assignees or others under its control to engage, in an operation on the Premises or related airport facilities that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of "hazardous substances" or "hazardous wastes," without the prior written consent of Lessor, which may be withheld or granted in Lessor's sole discretion.

As used herein, the term "hazardous substance" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state of Idaho or the United States government. The term "hazardous material" includes, without limitation, any material or substance that is (i) defined as a hazardous or toxic substance under any city, county, state or federal law, regulation or ordinance, (ii) oil and petroleum, and products thereof, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to section 311 of the Federal Water Pollution Control Act (33 U.S.C. section 1321), (v) defined as a "hazardous waste" pursuant to section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. section 6901, et seq.); (vi) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. section 6991, et seq.); (vii) defined as a ""hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. section 9601 et seq.), as such laws, regulations and ordinances may be amended from time to time and including all regulations promulgated pursuant thereto. The term "environmental law(s)" as used herein shall include, without limitation, the foregoing listed laws, regulations and ordinances and state analogs of such laws.

Lessee shall indemnify, defend and save Lessor harmless from all cleanup costs, investigation and monitoring costs, costs to provide alternative sources of drinking water to

neighbors, property damage costs, injury/health-related costs, litigation costs (including, but not limited to attorney's fees, accountant's fees, consultant's fees, costs on appeal, expert witness costs), losses and damages related to third parties, all fines, suits, procedures, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes by Lessee, its agents, licensees, subtenants or assignees and others under Lessee's control, in or about the Premises and related airport facilities or arising under or on account of any environmental law or similar applicable laws or regulations that occur during the term of this Lease, and from all fines, suits, procedures, claims and actions of any kind arising out of Lessee's failure to provide all information and take all actions required by any Federal, state or local authority, or arising out of Lessee's failure to cause its agents, licensees, subtenants, assignees or others under Lessee's control to do the same. Lessee's obligations and liabilities under this paragraph shall survive the expiration or sooner termination of this Lease and continue so long as Lessor remains responsible for any spills or discharges of hazardous substances or wastes in or about the Premises that occur during the Term.

16. Care of Petroleum Products and Other Material by Lessee. Lessee shall handle, use, store and dispose of petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it on the Airport in accordance with all applicable federal, state, local and Airport Rules and Regulations. Lessee shall, at Lessee's own expense, comply with, and cause its agents, licensees, subtenants, assignees and others under Lessee's control on the Premises and related airport facilities to comply with, all local and state environmental laws, rules and regulations, the Comprehensive Environmental Response, Compensation & Liability Act (42 U.S.C. § 9601 *et seq.*), and all other applicable federal laws, rules and regulations, and any and all amendments thereto, or hereafter promulgated.

Lessee shall not cause or suffer to occur, a release, discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substance as defined in Paragraph 15 at, upon, under or within the Premises, or related airport facilities, including the storm sewer, or any contiguous real estate. Lessee shall not permit its agents, licensees, subtenants, assignees or others under its control on the Premises and related airport facilities to engage in any activity that could lead to the imposition of liability under any environmental laws or similar applicable laws or regulations. Should "hazardous substances" and/or "hazardous wastes" be released, spilled or escape from storage or in any way contaminate the Airport or property adjacent to the Airport through activities of the Lessee, its agents, licensees, subtenants, assignees or others under Lessee's control on the Premises or related airport facilities, Lessee shall be responsible for the cleanup, containment and abatement of such contamination at Lessee's sole cost and expense. Should the Lessee fail to do so, Lessor, at its option, but without obligation, may take any reasonable and appropriate action in Lessee's stead. Lessee shall pay the cost of such remedial action upon delivery to Lessee of an itemization of the costs incurred.

Lessee shall comply strictly and in all respects with the requirements of all applicable environmental laws and with all similar applicable laws and regulations and shall notify appropriate governmental agencies, Lessor and the Airport Manager promptly in the event of any spill or release, or hazardous substance upon the Premises or related airport facilities and shall promptly forward to Lessor and the Airport Manager, copies of all orders, notices, permits, applications, or other communications and reports in connection with any such spill or release, or any other matters relating to environmental laws or related regulations or any similar applicable laws or regulations, as they may affect the Premises.

17. Hold Harmless. Lessee shall indemnify and hold Lessor and the property of the Lessor, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Lessor's sole negligence or willful misconduct, resulting from Lessee's occupation and use of the Premises and related Airport facilities at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Lessee's occupation and use of the Premises at Joslin Field- Magic Valley Regional Airport, the condition of the Premises, the condition of any of Lessee's improvements or personal property in or on the Premises or Airport-related facilities, or the acts or omissions of any person in or on the Premises or Airport-related facilities with the express or implied consent of the Lessee including but not limited to the Lessee, its employees, agents, licensees, subtenants, assignees, occupants and users of the Premises. Provided however, Lessee shall have no obligation to indemnify and hold Lessor harmless for claims, liability, loss, damage or expense directly resulting from Lessor's negligence or willful misconduct except by way of liability insurance required in paragraph 18. Lessor shall not be liable for any personal injury or property damage which may be sustained by Lessee, its employees, agents, licensees, subtenants, assignees, occupants and users or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Lessee, its agents, employees, licensees, subtenants, assignees, occupants and users of the Premises, and Lessee agrees to indemnify and hold Lessor harmless from such liability.

Should Lessor be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Lessee in connection with or arising out of an event covered by this indemnification provision, Lessee shall pay and/or otherwise compensate Lessor for Lessor's costs and expenses incurred in such suit, action or demand without limitation. The Lessee shall give reasonable notice to Lessor of any such claims or actions. The Lessee shall, in writing, notify Lessor of the counsel to be used in carrying out its obligations herein. Lessor shall be entitled to object to the use of said counsel and shall give reasonable notice of an objection regarding the use of said counsel. Further, Lessee's agreement to indemnify Lessor is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessee pursuant to the provisions of this Agreement. The provisions of the paragraph shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Agreement.

Lessee hereby agrees with Lessor that Lessor shall not be liable for damage to the property of Lessee, Lessee's employees, agents, licensees, subtenants, assignees, occupants and users, or any other person in or about the Premises at the request, or with the permission of Lessee. Further, the parties agree that Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

18. Insurance. At all times during the term of this Lease, Lessee shall maintain, at its expense, a policy of public liability insurance covering Lessee's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, designating Lessor as an additional insured and protecting Lessor and Lessee against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities relating to or arising out of Lessee's occupation and use of the Premises, with limits of at least $1,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Lessor not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense**,** subject to policy terms, conditions, limitations and

exclusions. With respect to the coverages required in this paragraph, the parties agree that Lessee's policy or policies shall be primary to any other valid and collectible insurance available to Lessor.

The above required insurance shall be maintained with an insurance carrier, or insurance carriers, satisfactory to Lessor and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor. Lessee shall provide Lessor with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Lessor.

Lessee, as an owner and/or operator of fuel storage tanks on the leased Premises, shall at its sole cost and expense, throughout the term of this Lease, provide and keep in force for the benefit of Lessor and Lessee, as their respective interests may appear, liability insurance from the Idaho State Insurance Fund under Title 41 Chapter 49 Petroleum Clean Water Trust Act and shall list the Lessor as additional insured. Lessee shall provide Lessor with a Certificate of Insurance evidencing Lessee's compliance with the requirements of this paragraph.

19. Events of Default. Time and the strict and faithful performance of each and every one of the terms, covenants and conditions of this Lease is expressly made the essence of this agreement.

The following shall constitute a default of the Lease:

A. failure of Lessee to pay rent or any other charge within thirty (30) days after the same is due,

B. failure of Lessee to comply with any term, covenant or condition of the Lease, other than as specified in Paragraph i. above, within thirty (30) days after written notice by Lessor to Lessee specifying the nature of the term, condition or obligation breached,

C. abandonment of the Premises; or,

D. termination of, or default on, the Automobile Concession Agreement effective October 1, 2024.

B. Remedies upon Default. If default be made by Lessee, Lessor may, at Lessor's election, either in law or equity, seek performance of the term, condition or obligation of this Lease or without further notice or demand, declare said Lease terminated and re-enter said demised Premises to repossess and enjoy the same.

C. Damages. In the event of termination, Lessor shall be entitled to recover as damages the reasonable costs of re-entry and reletting, including without limitation the reasonable attorney's fees and costs incurred to regain possession of the Premises, the cost of any clean up, refurbishing, removal of Lessee's improvements, fixtures and personal property, and to pay all other reasonable and necessary expenses or commissions paid by Lessor in re-leasing the Premises.

D. Cure. In the event of notification of a breach of any term, condition or obligation by Lessee and Lessee does in fact cure such breach, then and in that event Lessee shall pay all reasonable attorney's fees and costs incurred by Lessor in determination of the breach and notification of the breach to Lessee. If Lessee shall have defaulted in the performance of any (but not necessarily the same) terms, conditions or obligations for two or more times during any consecutive twelve-month-period during the term of this lease, then such conduct shall, at the election of Lessor, represent a separate event of default which cannot be cured by Lessee. Lessee acknowledges that the purpose of this provision is to prevent repetitive defaults which work a hardship upon Lessor and deprive it of timely performance by Lessee hereunder.

20. **Termination**. In addition to the right to terminate this Lease as provided in Paragraph 19, Lessor shall have a right to terminate this Lease upon thirty (30) days written notice for any of the following reasons:

A. If Lessor determines that the Premises is necessary or required for developing or maintaining the Airport or Lessor determines in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, to construct, repair, alter, develop or improve Magic Valley Regional Airport – Joslin Field, including but not limited to the buildings, parking, lighting, runways, airspace designation, which alteration, development or improvement is impaired by, or prevents or prohibits Lessee's permitted uses on the leased Premises.

B. If any federal, state or local court or authority mandates a change in the operations of the Airport facility which prohibits Lessee's permitted uses on the leased Premises.

C. The permanent abandonment of the Airport as an air terminal.

D. The lawful assumption by the United States Government or any authorized agency thereof, of the operation, control, or use of the Airport, or any substantial part or parts thereof, in such a manner as substantially to interfere with Lessee's use and enjoyment of the Premises for a period of at least ninety (90) days.

E. To terminate or amend this Lease to bring it into compliance with any requirements of the state of Idaho or the federal government to obtain or retain eligibility for government loans, grants, aid or funding.

F. Issuance by any court of competent jurisdiction of an injunction in any way preventing or restraining the use of the Airport, and the remaining in force of such injunction for a period of at least ninety (90) days.

The parties agree that Lessor shall have no liability to Lessee for damages or costs incurred by Lessee if termination of this Lease occurs under this paragraph.

21. **Lessee's duties upon Termination or Expiration.** Upon the termination or expiration of this Lease, Lessee agrees to do the following:

A. Lessee's Personal Property. Upon the termination or expiration of this Lease, Lessee agrees to remove all of Lessee's personal property, at its sole cost and expense;

B. Environmental Condition. Lessee further agrees to surrender the Premises free from environmental contamination of any kind caused by Lessee, its employees, agents, licensees, subtenants, assignees, occupants and users of the Premises during the term of this Lease.

22. **Lessee's Right To Terminate.** Lessee shall have the right to terminate this Lease upon the following events:

A. default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and Lessor's failure to cure said default within sixty (60) days after Lessee having first given Lessor written notice of the default;

B. permanent abandonment of the Airport; or,

C. a final court order prohibiting Lessee from conducting all of the permitted uses of the Premises described in this Lease.

23. **Notices.** All notices required to be given to each of the parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid and certified, return receipt requested, to the respective parties hereto at the following address:

Lessor: Joslin Field, Magic Valley Regional Airport
c/o City of Twin Falls

P.O. Box 1907
Twin Falls, Idaho 83303-1907

Lessee: Enterprise Rent-A-Car, LLC
7144 S State St
Midvale, UT
ATT: Mike DiOrio

or to such other address as may be designated in writing and delivered to the other party. All notices given by registered or certified mail shall be deemed completed as of the date of mailing.

24. Nondiscrimination.

(a) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Concessionaire, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Concessionaire shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants Owner shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Concessionaire hereby authorizes Owner to take such action as the Federal Government may direct to enforce this covenant, and Concessionaire also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(c) Concessionaire assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar

services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

25. **Non-exclusive Right.** Nothing contained in this Lease shall be construed to grant an exclusive right to operate a car rental service area facility at the Airport.

26. **Right of Inspection.** Lessor reserves the right to inspect the Premises and all facilities located thereon to ensure compliance with this Lease.

27. **Subordination.** This Lease shall be subordinate to the provisions of any existing or future agreements between Lessor and the United States, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement of Lessor for federal funds for the development of the Airport.

28. **Waiver.** Waiver of a breach of any provision of this Lease by any party in any particular instance shall not be deemed a waiver of any other breach of this Lease.

29. **Attorney's Fees.** In the event that either party commences litigation in a court of law relating to this Agreement (including any appeal), the prevailing party shall be awarded its attorney fees and costs, including, but not limited to, costs for arbitrator(s), mediator(s) and expert witnesses. Should Lessee file a petition in bankruptcy, Lessee agrees to pay all of Lessor's attorney fees and costs necessitated by Lessee's filing of the petition in bankruptcy.

30. **Amendment.** This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter. Any modifications or amendments to this agreement must be made in writing and signed by both parties, except modifications authorized under Paragraph 6 of this agreement which will become effective as provided therein.

IN WITNESS WHEREOF, Lessor and Lessee execute this Car Rental Service Area Agreement the day and year first above written.

OWNER
CITY OF TWIN FALLS, IDAHO

By_____
Ruth Pierce - Mayor

CONCESSIONAIRE
ENTERPRISE-RENT-A-CAR of UT, LLC

By_____
Mike DiOrio
Vice President/General Manager

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Bill Carberry, Airport Manager

Consent Calendar

Request:

Consideration of a request to authorize the mayor to sign an airport restaurant agreement renewal with Happy's Restaurant, L.L.C.

Background:

The airport's restaurant lease is due for a 5-year renewal this year. The current lease agreement was with long-time restaurant partners Tammy Boring and Heidi Sanderson. This past fall I received word that Tammy would be retiring from the business leaving Heidi and her husband Clayt to be the new lessee's and operators of the restaurant into the future.

Heidi Sanderson has been a part of the restaurant operation for over two decades and I look forward to working with her and her husband as they lead the restaurant into the future. The restaurant plays a unique role in helping to support the catering for general aviation jets and the dining needs of airline travelers, tenants and locals alike.

Approval Process:

A majority vote of the City Council is needed to approve the request.

Budget Impact:

The approval will allow for the airport to renew the restaurant agreement and receive rental payments.

Regulatory Impact:

The airport's lease agreements are prepared by the City Attorney and terms of the agreement are wide ranging in the requirements to protect the interests of both parties. The agreements are also subordinate to the federal, state, and local laws and regulations required of the airport and the tenants.

Conclusion:

Staff recommends the City Council approve the request to authorize the mayor to sign an airport restaurant agreement renewal with Happy's Restaurant, L.L.C.

Attachments: Airport restaurant agreement

AIRPORT RESTAURANT LEASE

THIS AGREEMENT is made effective the 1st day of January 2025 by and between the **CITY OF TWIN FALLS, IDAHO**, a municipal corporation, hereinafter called "Lessor" and **Happy's Restaurant, L.L.C.,** an Idaho limited liability company, hereinafter called "Lessee."

1. PREMISES. Lessor agrees to lease to Lessee the restaurant premises ("Premises") located in the Joslin Field-Magic Valley Regional Airport Terminal Building consisting of 3,127 square feet, which includes the restaurant, kitchen and storeroom as indicated on the floor plan marked Exhibit A attached hereto and incorporated herein by reference, for the operation of a restaurant. Lessee has inspected the Premises and accepts the same AS IS.

2. USE OF PREMISES. Lessee may use and occupy the leased Premises for the sole purpose of operating a restaurant and bar. As an incidental use, Lessee is authorized to sell gifts.

3. TERM. The term of this Lease shall commence on the 1st day of January 2025 and terminate on the 30th day of September 2029, unless earlier terminated as provided herein. In the event Lessee shall continue to occupy the leased Premises beyond the term of the Lease, continued occupancy of the Premises by Lessee shall not constitute a renewal or extension of the Lease, but shall create a tenancy from month to month on the same terms and conditions in effect on September 30, 2029, which tenancy may be terminated at any time by Lessor giving thirty (30) days written notice to Lessee.

4. TERMINATION BY EITHER PARTY. Lessor and Lessee agree that this Lease may be terminated prior to the aforementioned expiration date by either party upon the giving of sixty (60) days written notice.

5. RENT.

A. Initial Rent. Rent for the period January 1, 2025, through September 30, 2025, shall be at the rate of $792.09 per month, to be paid in advance on the first day of each month.

B. Rent Escalation. The parties agree that all subsequent rent for the Premises shall be subject to annual escalation on October 1 of each year following the commencement of this Lease. For purposes of determining future rents, the monthly base rent payment effective January 1, 2025, shall be $792.09 per month (Annual index base period for 2003 of 184.0=100). The annual change in the monthly rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, the change in the annual index for October 1, 2024 was calculated as follows:

Annual CPI-U Index for 2023		304.702
Less Annual CPI-U Index for 2022		292.655
Change in Annual Index		12.047
Divided by Annual Index for 2022	292.655	
Equals		0.041
Which is a percentage change of		4.1%
Prior rent (effective 10/1/2023)		$760.89
Multiplied by current percentage change	4.1%	$31.20
New rent (effective 10/1/2024)		**$792.09**

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each October 1 if there is a positive percent change, but never decreased; provided, however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A. If the Consumer Price Index becomes unavailable during the term of this lease or any renewal, the parties agree that its closest successor

index in the judgment of Lessor shall be applied to calculate the annual rent payment.

6. TELEPHONE SERVICE. Lessor agrees to provide Lessee with access and use of the terminal telephone system at its Premises. Lessor shall provide Lessee with two terminal system telephones and an additional telephone fax line and shall maintain the terminal telephone system and the system telephones at their sole cost and expense. Lessee agrees that it shall pay Lessor $75.00 per month for this telephone service.

7. UTILITIES. Lessor shall pay all charges for water, sewer and sanitation furnished to the property, except Lessee shall pay for all electricity. Lessor shall contract directly with Idaho Power Company for all electrical power used on the Premises. Lessee agrees to immediately reimburse Lessor for the cost of all electricity for the restaurant Premises upon receipt of a billing from Lessor for said electrical power.

8. RESTAURANT EQUIPMENT. During the term of this Lease, Lessee shall have the use of all of the restaurant equipment and personal property owned by Lessor listed in Exhibit B, which is attached hereto and incorporated herein by reference as if the same were set out in full. Lessee agrees to maintain Lessor's property in good and functional order at Lessee's expense. Lessee shall replace with like kind any equipment and personal property damaged, lost, misplaced or destroyed by Lessee, its agents or patrons.

9. RESTAURANT HOURS. Hours of operation of the airport restaurant shall be determined by negotiation between Lessee and the Airport Manager. In the event of a disagreement as to the reasonableness of the hours of operation, the Airport Advisory Commission shall mediate the dispute. The Airport Advisory Commission's determination as to the hours of operation shall be final.

10. LIQUOR. Lessor is the owner of a liquor license issued by the state of Idaho for use at the Joslin Field-Magic Valley Regional Airport Terminal Building. Lessee shall have the authority to operate under said liquor license and sell liquor by the drink on said restaurant Premises so long as Lessee complies with all rules, regulations and statutes regulating liquor licenses in the state of Idaho. In the event Lessee fails to comply with any such rule, regulation or statute, Lessee's right to use the license is terminated.

Lessee agrees not to remove the liquor license from the Premises. Lessee further agrees that it will not sell, assign, or transfer the liquor license except as instructed by Lessor. Upon termination or expiration of this Lease, Lessee agrees to fully cooperate with Lessor in transferring the liquor license to any successor lessee of said Premises and promptly execute all documents necessary for the assignment of the liquor license to any successor lessee of the Premises, or to the city of Twin Falls, or as instructed by the Airport Manager, all without cost to Lessor.

11. MAINTENANCE OF PREMISES. Lessee agrees that during the term of this agreement it will maintain the interior of said Premises in a good state of repair, reasonable wear and tear excepted, and that it will maintain the airport restaurant facilities in a sanitary manner and in conformance with the standards of the State Department of Health. Further, Lessee shall power clean the restaurant Premises carpet at least once a year and pump out the sewer line grease trap at intervals satisfactory to the Twin Falls City Waste Water Department.

12. PREMISES LIABILITY. Lessee shall indemnify and hold Lessor and the property of the Lessor, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Lessor's sole negligence or willful misconduct, resulting from Lessee's occupation and use of the Premises and related Airport facilities at Joslin Field – Magic Valley Regional Airport, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Lessee's occupation and use of the Premises at Joslin Field-Magic Valley Regional Airport, the condition of the Premises, the condition of any of Lessee's improvements or personal property in or on the Premises or Airport-related facilities, or the acts or omissions of any person in or on the Premises or Airport-related facilities with the express or implied consent of the Lessee including but not limited to the Lessee, it's agents, licensees, occupants and users of

the Premises. Provided however, Lessee shall have no obligation to indemnify and hold Lessor harmless for claims, liability, loss, damage or expense directly resulting from Lessor's negligence or willful misconduct except by way of liability insurance required in Paragraph 13. Lessor shall not be liable for any personal injury or property damage which may be sustained by Lessee, it's agents, licensees, occupants and users or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Lessee, it's agents, licensees, occupants and users of the Premises, and Lessee agrees to indemnify and hold Lessor harmless from such liability.

Should Lessor be named as a defendant, a party or otherwise identified in any suit, action or demand brought against Lessee in connection with or arising out of an event covered by this indemnification provision, Lessee shall pay and/or otherwise compensate Lessor for Lessor's costs and expenses incurred in such suit, action or demand without limitation. The Lessee shall give reasonable notice to Lessor of any such claims or actions. The Lessee shall, in writing, notify Lessor of the counsel to be used in carrying out its obligations herein. Lessor shall be entitled to object to the use of said counsel and shall give reasonable notice of an objection regarding the use of said counsel. Further, Lessee's agreement to indemnify Lessor is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessee pursuant to the provisions of this Agreement. The provisions of this paragraph shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Agreement.

Lessee hereby agrees with Lessor that Lessor shall not be liable for damage to the property of Lessee, Lessee's employees, agents, licensees, occupants and users, or any other person in or about the Premises at the request, or with the permission of Lessee. Further, the parties agree that Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

13. INSURANCE.

i. Required Insurance. Lessee shall maintain at Lessee's expense a commercial general liability insurance policy with product liability coverage, with Lessor designated as an additional insured under liability coverages, for Lessee's operations at Joslin Field-Magic Valley Regional Airport, protecting Lessor and Lessee against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises and related Airport facilities, with limits of at least $1,000,000.00 combined single limit each occurrence for personal injury and property damage and shall contain fire damage liability insurance protection with minimum limits of $50,000.00; all said insurance to protect, hold harmless, and indemnify Lessor not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense**,** subject to policy terms, conditions, limitations and exclusions. With respect to the coverages required in this paragraph, the parties agree that Lessee's policy or policies shall be primary to any other valid and collectible insurance available to Lessor.

ii. Form of Policy. The above required insurance shall be with an insurance carrier, or insurance carriers, satisfactory to Lessor and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor. Lessee shall provide Lessor with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of Paragraph 13, and shall at all times keep current policies or certificates on deposit with Lessor. Failure to comply with the terms of Paragraph 13 will automatically constitute a breach of this Lease and this Lease shall terminate upon the declaration of the Lessor.

14. VENDING MACHINES. Lessee agrees not to install or maintain on the Premises, vending machines of any kind and nature whatsoever.

15. LIENS AND ENCUMBRANCES. Lessee shall keep the Premises free from any liens arising out of work performed, materials furnished or obligations incurred by Lessee and shall indemnify, hold

harmless and defend Lessor from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee. Lessee further agrees not to present as collateral, or otherwise encumber any property belonging to Lessor, including rights acquired under this Lease agreement.

16. LEASE NOT ASSIGNABLE. Lessee agrees that this Lease is not assignable and Lessee further agrees not to sublet any portion of said Premises without the prior written consent of Lessor. Lessee shall act as local manager or designate an employee to be the local manager. Said manager shall have the authority to make decisions on behalf of the Lessee regarding this Lease agreement and the decisions of said manager shall be deemed to be those of the Lessee. A manager, who is not also a Lessee, may not make a decision regarding the extension of this agreement.

17. DAMAGE OR DESTRUCTION. In the event the Premises leased to Lessee by Lessor are damaged by fire or other casualty so as to render said Premises unsuitable for occupancy and business by Lessee, then Lessor and Lessee agree that Lessor shall have the option to return said Premises and items shown in Exhibit "B" to a like condition as existed prior to said fire or casualty in which event, repairs shall be completed within a reasonable time and during said reconstruction rent shall abate, or the Lessor may in Lessor's discretion determine not to repair said Premises, in which event this Lease shall terminate immediately upon said decision.

18. FIXTURES. At the expiration of this agreement or termination hereof, the Lessee has the right to remove from the Premises, all the equipment and furnishings owned by Lessee which have not become fixtures to said Premises. Lessee agrees, however, not to damage the Premises by the removal of any of Lessee's property. The parties further agree that all improvements and fixtures attached to the Premises by Lessor and Lessee shall become a part of said Premises and remain with said Premises at the termination of this agreement.

19. LESSEE'S PERSONAL PROPERTY. All personal property, including trade fixtures owned or leased by Lessee and used upon the Premises in Lessee's business operation, shall be at the risk of Lessee.

20. RIGHT OF INSPECTION. Lessor reserves the right to inspect the Premises to ensure compliance with this Agreement.

21. RIGHT OF RE-ENTRY. A breach of any condition or covenant herein contained by Lessee or in the event of Lessee's vacation of the Premises prior to the expiration of the term hereof, or if Lessee is removed by other proceedings, Lessor has the right to re-enter the said Premises to otherwise prepare said Premises for a new occupant, and the entry by said Lessor shall not be considered as an acceptance of any surrender of said Lease, actual or implied, or of forgiveness of any of the terms and conditions herein made obligatory upon Lessee, and Lessor shall have the further right to pursue proper legal proceedings against Lessee and upon proper authorization exclude said Lessee from the Premises hereinabove described.

22. COMPLIANCE WITH LAW. Lessee shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, zoning restriction, restrictive covenants of record, ordinances or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be enacted or promulgated.

23. NO PARTNERSHIP. Nothing contained in this Agreement shall create or be construed as creating a partnership or joint venture relationship between Lessor and Lessee. The parties agree that Lessee and its employees and agents are not employees or agents of Lessor and are not entitled to worker's compensation or any benefit of employment with Lessor.

24. NON-EXCLUSIVE RIGHT. The lease of the restaurant premises granted herein is non-exclusive. Lessor specifically reserves the right to enter into agreements with other firms, individuals or corporations.

25. NONDISCRIMINATION.

(a) Lessee, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 C.F.R. Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Lessee, for itself, its successors in interest, and assigns, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of any facilities; (2) that in the construction of any improvements on, over, or under such land for the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be discriminated against and Lessee shall comply with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended; and, (3) that in the event of breach of any of the preceding nondiscrimination covenants Lessor shall have the right to terminate this Agreement, and to re-enter and repossess said land and the facilities thereon, and hold the same as if said Agreement had never been made or issued. In the event of noncompliance with the preceding nondiscrimination covenants, Lessee hereby authorizes Lessor to take such action as the Federal Government may direct to enforce this covenant, and Lessee also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

(c) Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

26. <u>Disadvantaged Business Enterprise Participation</u>. The Concessionaire shall be required to take all necessary and reasonable steps to achieve an Airport Concessions Disadvantaged Business Enterprise (hereinafter "ACDBE") goal as set by Owner from time to time throughout the remaining term of this Agreement. This goal shall be measured as a percentage of the Concessionaire's expenditures in relation to its operations under this agreement. The ACDBE participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Part 23 and shall be counted toward the goal as set forth in those regulations.

The Concessionaire shall be required to comply with other appropriate provisions of 49 CFR Part 23 implementing Sections 511 (h) of the AAIA. The Concessionaire shall submit the following reports to Owner in the form specified by Owner for the purpose of demonstrating compliance with this paragraph:

1. Concessionaire agrees that within sixty (60) days of the end of each calendar year of the Term of this Agreement, it will provide a report to Owner, in a form acceptable to Owner, an annual statement setting forth all such ACDBE gross receipts for such year in accordance with the requirements of 49 CFR Part 23 (See Exhibit C).

2. Concessionaire agrees that it will also submit within the same periods described in paragraph 1 above a report to the Airport, in a form acceptable to Owner, describing the Concessionaire's total gross receipts for the year of the term as provided in paragraph 1 above and in the case of a rental car concession, also the total dollar value of vehicles and/or other goods and services purchased by the Concessionaire for each year of the Term of this Agreement. This report shall include any ACDBE or DBE participation for the year.

3. Concessionaire will have no right to terminate an ACDBE for convenience without Owner's prior written consent. If an ACDBE is terminated by the Concessionaire with Owner's consent or because of the ACDBE's default, then the Concessionaire must make a good faith effort, in accordance with the requirements of 49 CFR section 23.25(d)(1)-(3) and (5)-(7), and 49 CFR section 26.53, to find another ACDBE to substitute for the original ACDBE to perform the same estimated gross receipts (or in the case of a rental car concession, to sell the same amount of vehicles and other goods and services) under the contract as the ACDBE that was terminated.

The Concessionaire's breach of its obligations under (1), (2) or (3) above shall be a default by Concessionaire under Section 20 and shall entitle Owner to exercise all its contractual and legal remedies, including termination of this Agreement.

Concessionaire agrees that Owner may review its records and on-site concessions on a (monthly/quarterly/annual) basis for compliance with all ACDBE law, rules, and regulations.

Concessionaire agrees to otherwise comply with all ACDBE laws, rules, and regulations, and to assist Owner with Owner's ACDBE Program Plan as specified herein and pursuant to 49 C.F.R. Part 23.

27. <u>SUBORDINATION OF AGREEMENT</u>. The parties agree that this Agreement is subject and subordinate to the terms, reservations, restrictions, provisions and conditions of any existing or future agreement between the Lessor and the United States of America, or the Lessor and the state of Idaho, relative to the development, operation or maintenance of the Joslin Field - Magic Valley Regional Airport and appurtenant facilities, the execution of which has been or may be required as a condition precedent to the participation by any Federal Agency or the expenditure of federal or state funds for the extension, expansion or development of said Airport and related facilities.

28. **NOTICES.** All notices required to be given to each of the parties hereto under the terms of this Agreement shall be given by depositing a copy of such notice in the United States mail, postage prepaid and certified, return receipt requested, to the respective parties hereto at the following address:

Lessor: Joslin Field, Magic Valley Regional Airport
c/o City of Twin Falls
P.O. Box 1907
Twin Falls, Idaho 83303-1907

Lessee: Happy's Restaurant, LLC
3759 N 2381 E
Filer , Idaho 83328

or to such other address as may be designated in writing and delivered to the other party. All notices given by certified mail shall be deemed completed as of the date of mailing.

29. **WAIVER.** Waiver of a breach of any provision of this Agreement by any party in any particular instance shall not be deemed a waiver of any other breach of this Agreement.

30. **ATTORNEY'S FEES.** In the event a dispute should arise between the parties relating to this Agreement, whether or not a lawsuit is ever filed, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in such dispute, and in any bankruptcy or appeal proceeding.

31. **ENTIRE AGREEMENT**. This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements or understandings between the parties relating to the subject matter. Any modifications or amendments to this agreement must be made in writing and signed by both parties, except modifications authorized under Paragraph 5 of this agreement which will become effective as provided therein.

"LESSOR"

CITY OF TWIN FALLS, IDAHO

By_____
Ruth Pierce- Mayor

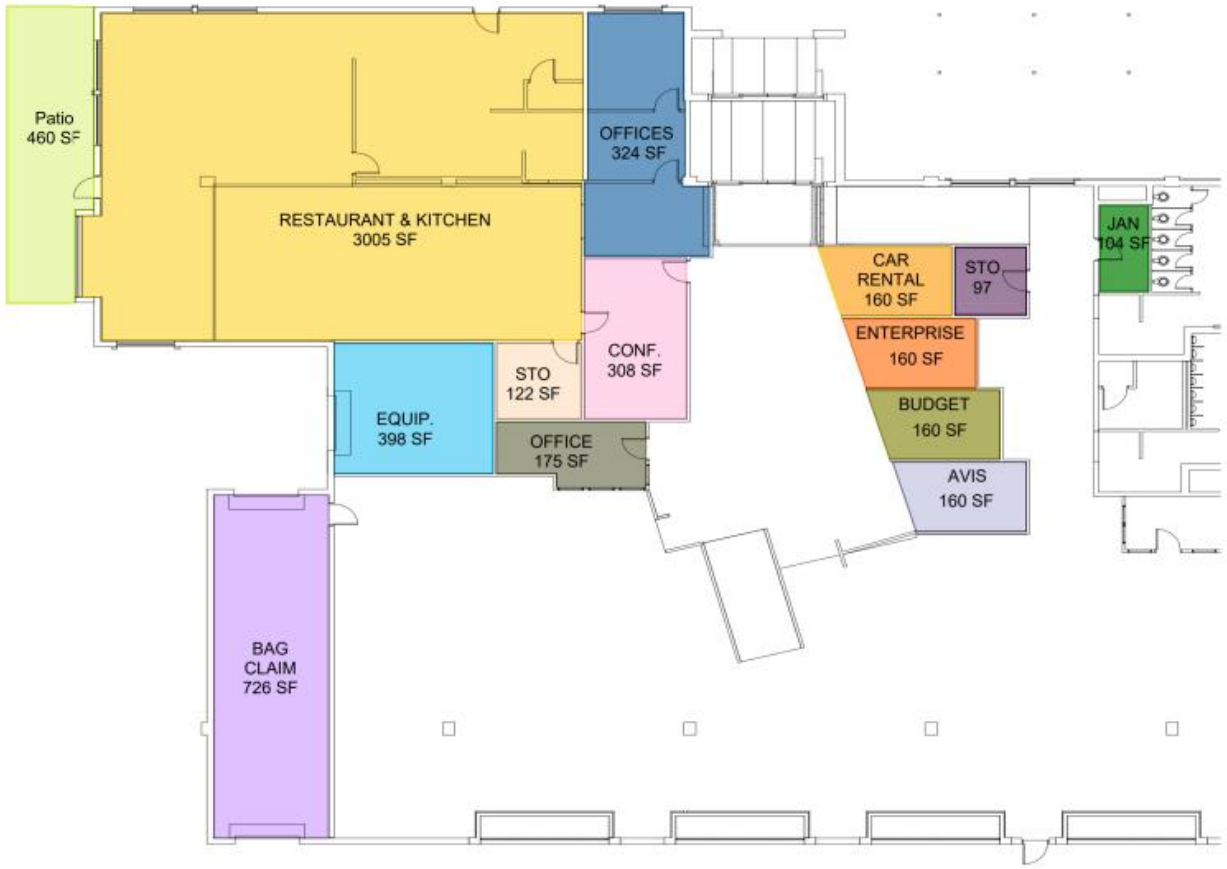
"LESSEE"

HAPPY'S RESTURANT, L.L.C.

By_____
Heidi Sanderson

By_____
Clayt Sanderson

MAGIC VALLEY REGIONAL AIRPORT TENANT LEASE SPACES



CSHQA

Exhibit A

RUN DATE	September 16, 2024
QUANITY	**Description**
16	SQUARE TABLES 30X48 (2022)
1	DOUBLE TABLE
2	LG. ROUND TABLES 60" (2022)
80	MEDIUM METAL BACKS, WOOD SEATS CHAIRS (2022)
9	BAR STOOLS MEDIUM WEIGHT METAL UPHOLSTERED SEAT AND BACK (2015)
1	PORTABLE COLD BUFFET UNIT (SALAD BAR). DUKE MODEL # PAH-4CP
3	60" STAINLESS STEEL TABLE MODEL # ELAY305
1	96" STAINLESS STEEL TABLE # ELAY 308
1	48" STAINLESS STEEL EQUIPMENT STAND (LOW) # ELAY304
1	DUKE CONVECTION OVEN ELECTRIC MODEL # E101E
1	6 X 8 WALK IN COOLER WITH REFRIGERATION/CUSTOM KAIT MFG.
1	1-DOOR REFRIGERATOR Turbo Air (2019) M3R19-1-N
1	UNDER THE COUNTER DISHWASHER (HIGH TEMP) ADS ETAF-3 SERIES(2014)
1	HOT FOOD TABLE 3-COMP DUKE # 40481
1	SALAD SANDWICH UNIT 48" MSTSerial # KMS4TC7246 (2018)
1	SIX BURNER ELECTRIC RANGE/OVEN
1	ELECTRIC FRYERS COUNTER TOP STAR F85 Fryer (2011)
1	SLICER 10" GLOBE # GC10
2	FULL SIZE SOUP WARMER WITH TEMPLATES DUKE # TANINF-33
1	1 Door Turbo Air Pro 26 F-N Rgith Hnge (2021)
1	DIRECT 2 KEG DRAW BEER COOLER TRUE # TDD-2
1	DOOR SLIDE GLASS TRUE DOOR MERCHANDISE # GDM33
1	CUSTOM COUNTER & CABINET, UNDER CASH REGISTER
1	# ICE MACHINE WITH BIN SERVENDICE400HT (2019)
1	60" STAINLESS STEEL TABLE EQUIPMENT STAND (LOW) # ELAY 306
3	ALUMINUM SPILLAGE PAN.
1	FULL SIZE S/S PAN 4"
2	HALF SIZE S/S PAN 4"
3	THIRD SIZE S/S PAN 4"
1	FULL SIZE FLAT LID (SOLID)
2	1/2 SZ FLAT LID
1	ADAPTER PLATE 2-8 1/2 OPENING ??
2	7 1/4 QT VEGETABLE INSET (6)
	PIE CASE 7048M DIERFIELD **STORED AIRPORT**
1	FOOD WARMER (STEAMER) ROUNDUP DFWT-100 (2012)
1	H.D. DESIGNER GRIDDLE STAR 156 24 X 48
6	RECTANGULAR TABLES
5	DOUBLE BOOTHS
2	SINGLE BOOTHS
1	LONG RETANGULAR BY WINDOW
1	FILTER MACHINE 55 hs 79101 (2010)

EXHIBIT B

excell: rest. equip.

EXHIBIT "C"
ACDBE ANNUAL ATTAINMENT REPORT
MAGIC VALLEY REGIONAL AIRPORT
For Calendar Year Ending December 31, 202_

Automobile Rental Car Brands or Trade Names:	
Automobile Rental Agency Name (Operator):	

This Company/Business ___is,___is not a certified DBE firm. If certified, please provide evidence of certification and the percentage of direct DBE ownership of the business.
_____%DBE direct-ownership of business.

Total Goods & Services Purchased or Leased for Magic Valley Regional Airport Operation for this Period $

Dollar Value of Goods & Services Purchased or Leased from Certified ACDBE Firms for Magic Valley Regional Airport-operation for this Period:

ACDBENAME	AMOUNT PAID TO ACDBE VENDOR
	$
	$
	$
	$
TOTAL PAYMENTS TO ACDBE VENDORS	$

Percentage of ACDBE Participation_____% ACDBE Goal_____%
ACDBE Goal Met:_____YES _____NO

If the ACDBE Goal was not met, please provide detailed explanation of efforts made to attract qualified ACDBE participants and reasons for the deficiency.

I certify that the above information is true and accurate to the best of my knowledge and accurately reflects our ACDBE participation and good faith efforts during the period indicated.

Signature:……..
DATE: .....
Printed Name:..... TITLE: .....

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: Kelli Ebersole, City Planner

ACTION ITEM

Request:

Request to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritional's (PZ24-0123).

Time Estimate:

Approximately 5-10 minutes for presentation and questions/comments to follow.

Background:

Glanbia Nutritionals is requesting approval from City Council for additional building height on additional silos. The property is currently zoned M-2. The existing land use is an industrial use for cheese and whey production.

On December 3, 2024, Planning and Zoning recommended approval of the request by a vote of 5-0.

Approval Process:

The additional height process requires a public hearing to be held in which interested persons have the opportunity to be heard in regard to the application. After receiving the recommendation from the Commission, the City Council shall hold a public hearing. After the public hearing, the Council may approve, conditionally approve, or disapprove the application as presented.

Per City Code 10-4-10(C) states “No building shall exceed fifty feet (50’) in height except as provided by Section 10-7-3”.

Per City Code 10-7-3 The council may allow greater than standard building heights with or without extra setback requirements, in the CB, C1, OT, M1 and M2 zoning districts and subdistricts. A request for additional height shall follow the public hearing process for zoning map amendments as described in subsection 10-4-5(B) and 10-14-7 of this title.

Budget Impact:

N/A

Regulatory Impact:

If the additional height request is approved, as presented, Glanbia Nutritionals will be able to add more silos to their property up to 75 feet in height.

History:

In February 2011, a non-conforming expansion permit was issued to Glanbia Foods for an expansion of their operations at this location.

In December 2014, the city council approved additional building height, up to 70 feet 9 inches, for two other silos on the subject property.

In August 2021, the city council approved additional building height, up to 75 feet, for an additional silo on the subject property.

Analysis:

The applicant wants to add additional 50,000 gallon raw milk silos for milk segregation, to better serve their needs at the facility on the subject property. The silos will be a maximum of 75 feet tall. The first silo is expected to be the same height as Silo #8.

The addition of the silos will not have detrimental impacts on surrounding properties, due to traffic, noise, glare, odor, or fumes and/or vibrations. There is no need for additional employees, and no change to the hours of operation.

The location of the silo is considerably set back from the current roadway, and from any nearby residential properties.

Conclusion:

Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

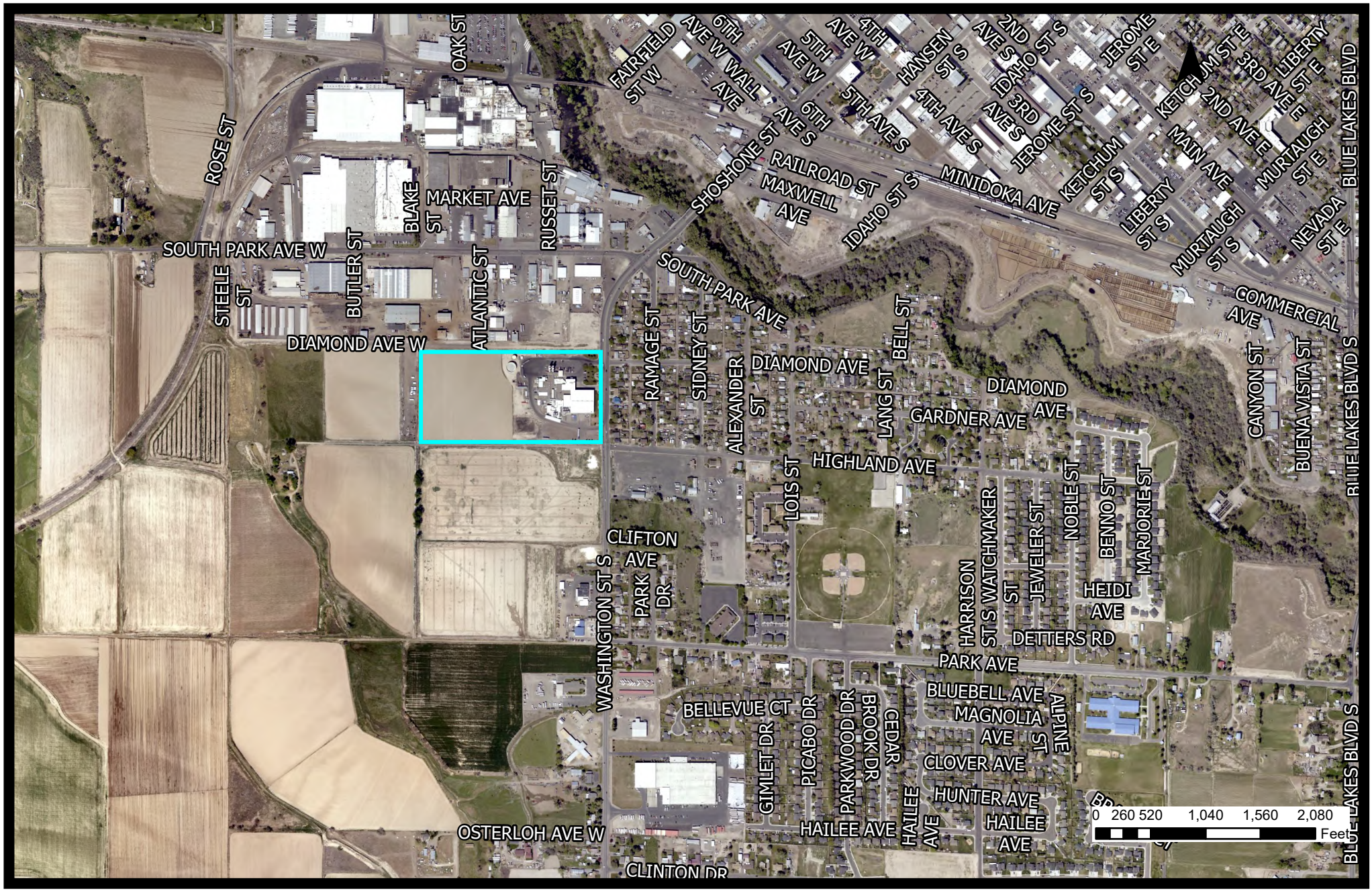
Upon conclusion, should the Commission recommend approval to City Council of the request as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

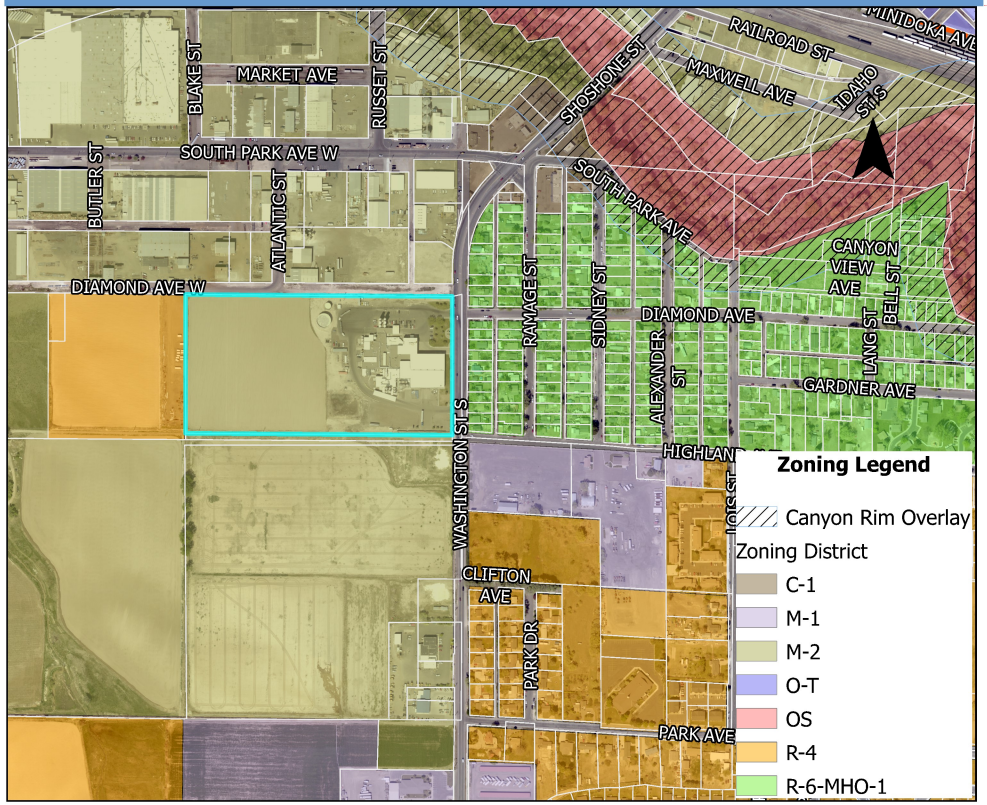
Attachments:

1. PZ24-0123 Vicinity Layout
2. PZ24-0123 Presentation Map
3. PZ24-0123 Google Street View Exibit
4. PZ24-0123 Applicant Narrative
5. PZ24-0123 Proposed Elevations
6. PZ24-0123 Proposed Site Plan
7. PZ24-0123 December 3, 2024 PZC Minutes

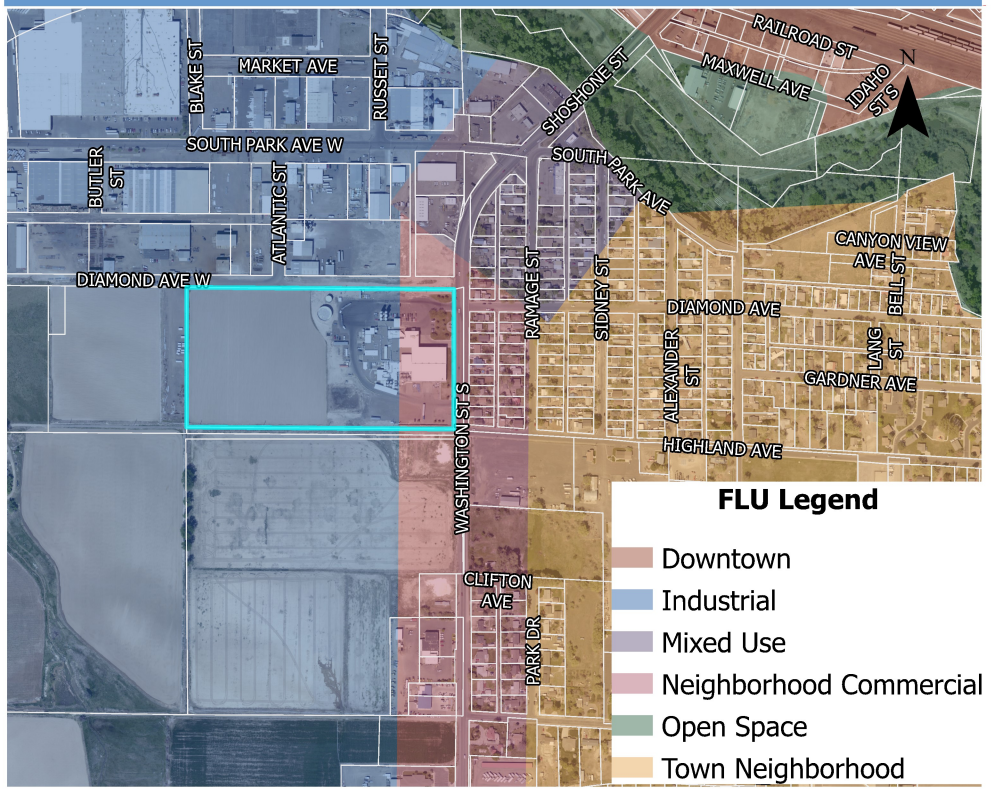
VICINITY MAP



ZONING MAP



FUTURE LAND USE MAP



Zoning

Current Zoning:M-2, Heavy Manufacturing

Current Land Use: Manufacturing

Proposed Zoning: N/A

Proposed Land Use: Manufacturing

Surrounding Area

North: City Facilities/Manufacturing

South: Vacant/Agricultural

East: Washington St S/Residential

West: Vacant/Agricultural

Regulations

10-4-10(C), 10-7-3, 10-4-5(B), 10-14-7

FLU Category

Industrial:
Non-retail employment
• Supporting uses, such as hotels, restaurants, and other retail are integrated into the land use
• Suitable sites have excellent access to regional roads
• Adjacent to the railway
Land Uses:
Office parks
• Corporate campus
• Warehousing
• General manufacturing
• Food processing
• Industrial campus

Figure 1: Looking North

Figure 2: Looking South

Figure 3: Existing

Figure 4: Proposed Location

Twin Falls City:

3a) Glanbia Nutritional's Twin Falls Plant at 236 Washington Street South is looking to add an additional raw milk silo to support segregate between types of milk (e.g. organic, conventional, etc.) by installing an additional 50,000 gallons silo (max. 75' tall). Several silos in the immediate vicinity are 70'-75' tall, as well as several on the southside of the plant, all previously granted 'Additional Height' variances.

The new silo foundation and alcove extension is being evaluated and designed by EHM Inc. to ensure a structurally sound foundation. First draft drawings are expected the week of Oct. 21st to understand the exact height of the silo foundation.

The first draft drawings are expected the week of Nov. 4th for the silo; it is expected to be the same height as Silo #8.

3bi) No change to hours of operation will result.

3bii) No additional traffic anticipated.

3biii) No change in number of employees.

3ci) No change in noise.

3cii) No change to glare

3ciii) No change to odor.

3civ) No change to fumes and vibration on adjoining properties.

3cv) No change to fumes and vibration on adjoining properties.

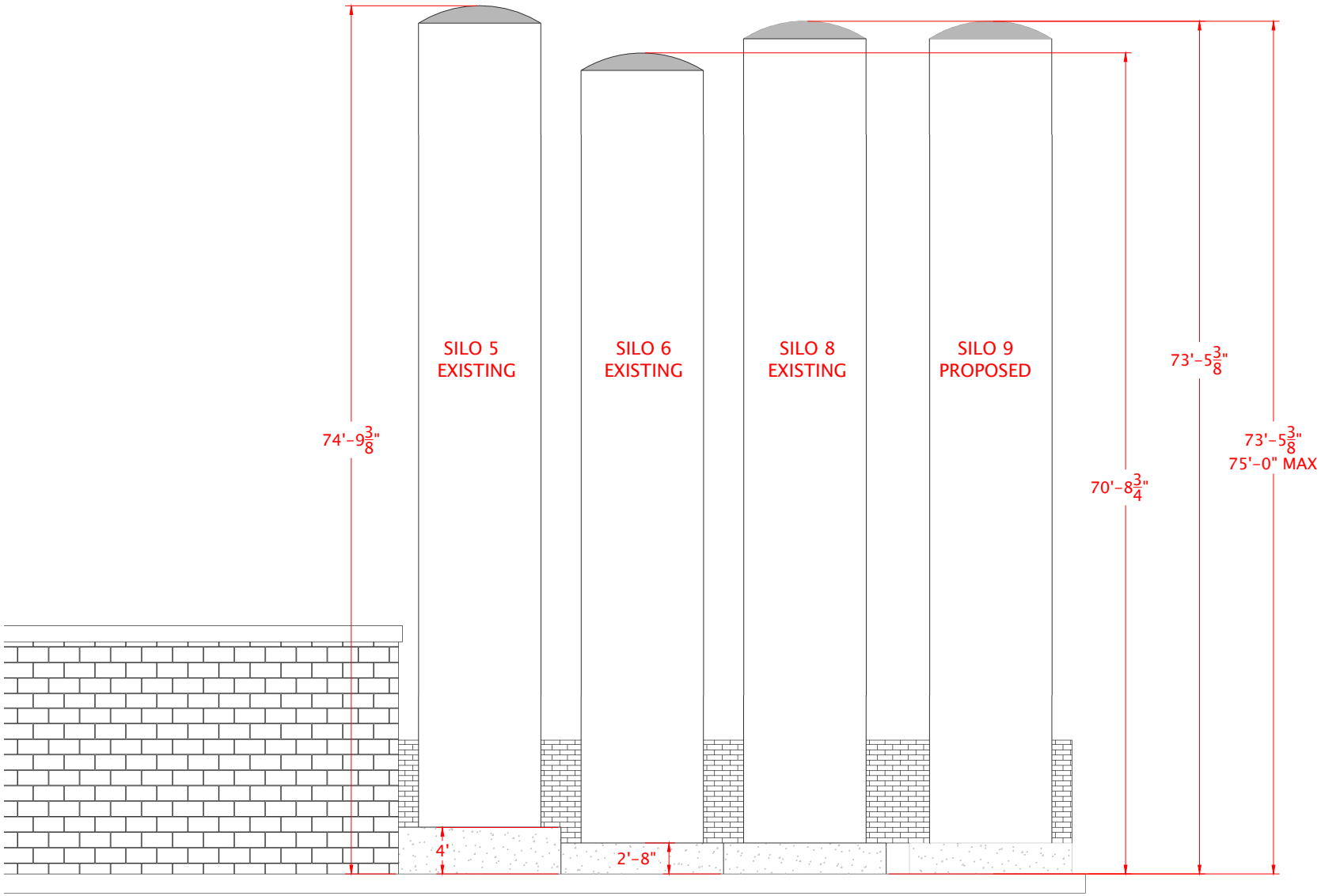
Sincerely,
Kim Jasper

Kimberly Jasper | Project Engineer

Glanbia Nutritionals

Cell: 208 490 1121

Better nutrition,
built around you.



EAST PROPOSED ELEVATION

SCALE: 1/4" : 1'-0" NOTE:

236 WASHINGTON ST. S
TWIN FALLS, ID 83301
www.glanbianutritionals.com
Bus: (208) 733-3226

DRN. BY::	RWS	DATE: 05/12/2021
DSN. BY:	XX	JOB NO.: YR##
APPD. BY::	XX	SCALE: NTS

CLIENT: GLANBIA NUTRITIONALS TWIN FALLS, ID

PROJECT: SILO 9 ADDITION

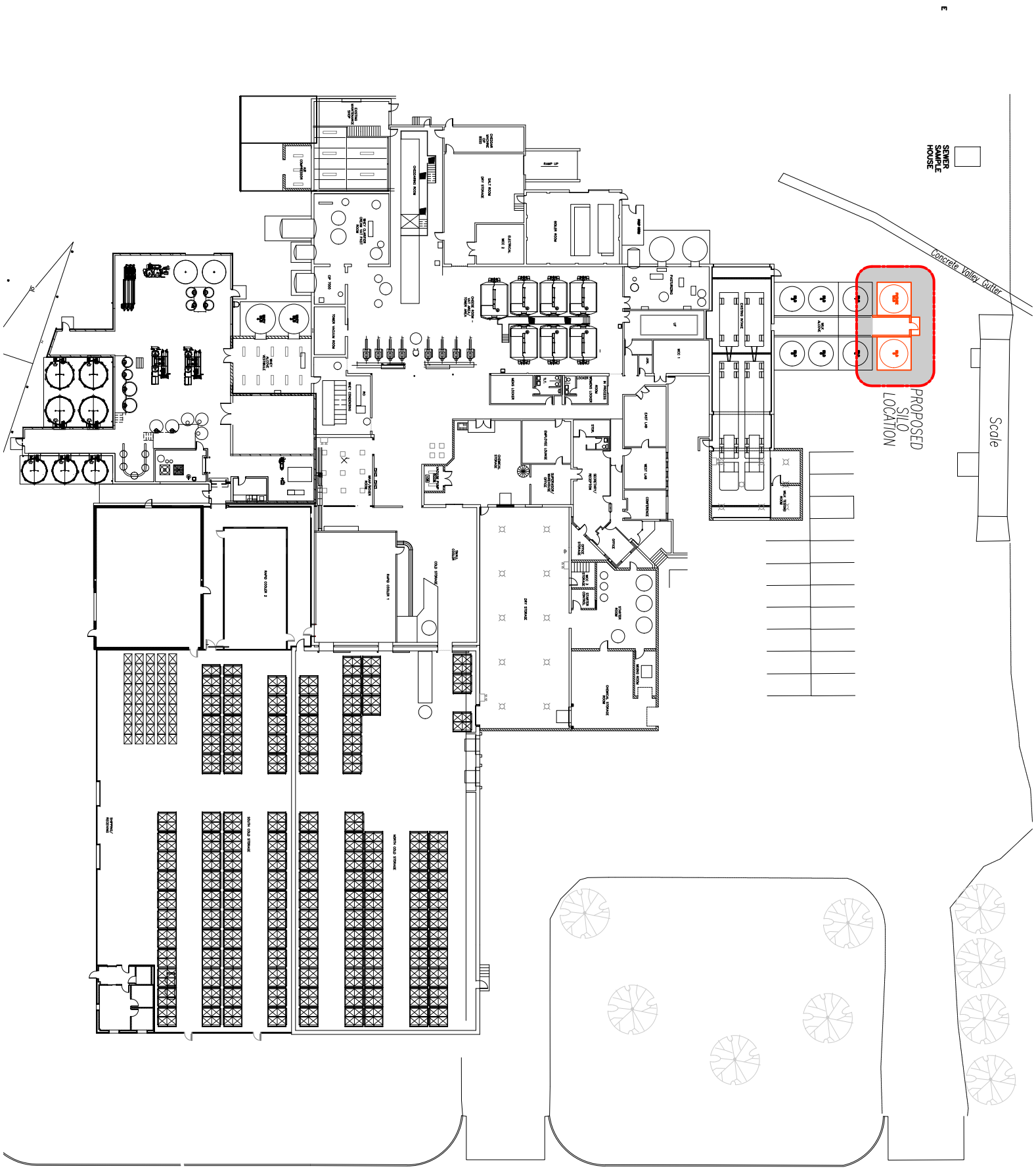
SILO 9 ADDITION

REVISIONS

△	DATE	DESCRIPTION

SHEET #: S-01

1 OF 1



SHEET #: G-XXX XX OF XX	REVISIONS △ DATE DESCRIPTION	FULL SITE	GLANBIA TWIN FALLS, ID SITE PLAN	CLIENT: PROJECT:	Glanbia Nutritionals 236 WASHINGTON ST. S TWIN FALLS, ID 83301 www.glanbianutritionals.com Bus: (208) 733-3226 DRN. BY: XX DATE: 02-04-2015 DSN. BY: XX JOB NO.: YR-## APPD. BY: XX SCALE: NTS	PRELIMINARY: NOT FOR CONSTRUCTION

Twin Falls Planning & Zoning Commission
Minutes

Tuesday, December 3, 2024, 6:00 PM

203 Main Ave East
Twin Falls, ID 83303

Members -
City Limits: Chairperson Danielle Titus; Vice-Chair Cortney Campbell; Todd Rambur; Robyn Weatherford; Kelly Herrgesell; Tiffany Zimmerman
Area of Impact:

1) **Confirmation of Quorum/Call Meeting to Order**
Chairperson Titus called the meeting to order at 06:00 PM
Members Attending: Titus, Campbell, Rambur, Weatherford, Zimmerman
Staff Attending: Spendlove, Klaver, Ebersole, Green, Vitek

2) **Conflict of Interest Declaration**

3) **Consent Calendar**

a) Approval of minutes from the following meeting: November 19, 2024
Vice-Chair Campbell made a motion to approve the consent calendar, as presented. Commissioner Rambur seconded the motion.

4) **Items of Consideration**

5) **Public Hearings**

a) Request a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)

Staff Presentation:
Senior Planner Klaver presented the request for a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)
Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

A. Requests for an amendment to this title shall be submitted to the commission which shall evaluate the request to determine the extent and nature of the amendment requested;
B. If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and
C. If the request is not in accordance with a comprehensive plan, the request shall be submitted to the commission or, in its absence, the council which shall recommend and the council may adopt or reject an amendment to a

comprehensive plan under the notice and hearing procedures provided in section 10-7-20 of this title.

Zoning Map Amendment: The commission, prior to recommending a zoning map amendment that is in accordance with a comprehensive plan to the council, shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. Notice for public hearings shall be provided as set forth in section 10-7-20 of this title.
In 1988, the Fire Station received approval for a sign and records show the zoning being the current zoning designation of R-4. In 2005, the Fire Station was expanded to accommodate two brush trucks by building a 2,000 Square Foot garage.

The subject property was the old Fire Station #3, which has stopped being used since the new Fire Station #3 was finished in February 2024.
The City of Twin Falls would like to rezone the property located generally at 929 Washington Street South from Residential Medium Density (R-4) to Commercial Highway (C-1). The property is located on the intersection of two (2) arterials, Washington Street South and Orchard Drive. The busy intersection makes this property better suited for the C-1 district, which is intended to provide for commercial activities of various sizes from large malls to small shops, fast food restaurants and tourist accommodations. This district is designed for application on major streets or portions thereof. Furthermore, the property is surrounded by the C-1 zoning district on the south, east, and west.

How the proposed zoning change relates to the Comprehensive Plan.

- The future land use map of the comprehensive plan calls out the area being a mixed-use area. The mixed-use designation describes this area as anchored by grocery store, civic, or entertainment uses that allows for high-intensity mixed use development in a compact, pedestrian oriented environment. The desired mix of land uses is retail, office, restaurants, civic, hotels, apartments, vertical mixed use, etc. All these uses align with the uses in which the C-1 zone allows by right or with a Special Use Permit.

Compatibility with the surrounding area.

- The area is surrounded by C-1 zoning. Immediately to the south and east is zoned C-1 with the Orchard Park Planned Unit Development. This development is housing the fire station, Swenson's Market, a Coffee shop, with other development in the works. Across the Washington St S, to the west, is undeveloped land that is zoned C-1 with a family dollar directly to the south of the vacant land. On the North East corner of Orchard and Washington St S is residential property zoned R-1. On the North West corner of the Orchard and Washington St S is C-1 zoned property that has an Oasis gas station.

Explanation of the intended use/development of the property.

- The intended or desired use of this property is follow the desired uses outlined in the Comprehensive Plan's future land use designation of Mixed-use as stated above in question 1. We believe this rezone request would allow for the

flexibility to make that desire a reality.

Upon conclusion, the commission is tasked with making a recommendation to the City Council on the zoning designation being requested.

The commission may recommend the proposed zone change from R-2 to C-1, recommend the R-2 zoning be maintained, recommend an alternative zoning designation, or table the request to acquire additional information.

PZ/Questions & Comments:

- Commissioner Rambur asked if there were any specific plans.
- Senior Planner Klaver replied that there are none but the zone change would be beneficial in the future.
- Commissioner Rambur asked if the city is planning on keeping or selling the property.
- Senior Planner Klaver stated they plan on selling.
- Chairperson Titus asked about the R-4 zone and how the fire station was permitted.
- Senior Planner Klaver answered that a Special Use Permit was given.

Public Hearing: Opened and closed with no public input.

Discussions Followed:

Commission feels this will be a good fit with the surrounding.

MOTION: Vice-Chair Campbell moved to approve the request for a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102). Commissioner Weatherford seconded the motion. Roll call vote showed all members present voted.

Approved 5 to 0.

b) Request a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).

Staff Presentation:
Senior Planner Klaver presented the request for a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).
Per City Code 10-6-1.7 (B) The applicant is required to present a preliminary review prior to a public hearing to the Planning and Zoning Commission in which the Commission may give suggestions and ask questions of the applicant about the proposed ZDA.

Per City Code 10-6-1.7(E) Approval of a ZDA shall be based on the following

standards: the proposed uses are not detrimental to surrounding properties; deviations from Title 10 shall be warranted by the design of the conceptual plan; conformance to the Comprehensive Plan, and existing and/or proposed infrastructure must be adequate for the project.

Per City Code 10-14-1 thru 8 Any application for a zoning district change shall follow the procedures outlined in these sections.
In 2005, Campus Park PUD was created and established the land use and zoning entitlements.
The proposed amendment is to increase the building coverage of the sight by allowing for another building consisting approximately 8,000 SF. Per 10-6-1.6, increasing the building coverage of the sight from the approved Conceptual Development Plan requires a recommendation from the Planning and Zoning Commission to the City Council. The Council makes the decision.

The applicant is not requesting to increase the density, building height, reduction in off-street parking ratio, reducing setbacks, reduction in open space, or the design theme. This approval grants the right for the developer to apply for a building permit for a new residential building, while keeping all regulations (i.e. parking ratio, height, density, etc.) the same.

The City of Twin Falls Comprehensive Plan calls for Commercial and Town Neighborhood type uses. Commercial uses denoted in the Comprehensive Plan are Highway-oriented, large-format retail, hotels, restaurants, and other retail. Town Neighborhood uses denoted in the Comprehensive Plan are primarily residential, such as single family, triplex, schools, etc. City Staff believe this amendment would be in line with the City's Comprehensive Plan.

Staff does not see detrimental impacts with the request, and would recommend approval.
Upon conclusion, the commission is tasked with making a recommendation to the City Council on the zoning designation being requested by the applicant.

The commission may recommend the approval as presented, recommend approval with conditions, recommend denial, or table the request to acquire new information. Should the commission recommend approval of the request, Staff recommends the following condition:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

PZ/Questions & Comments:

- Vice-Chair Campbell asked about parking.
- Senior Planner Klaver stated it still meets standards and is included when obtaining the building permit.

Public Hearing: Opened and closed with no public input

Discussions Followed:

Commission feels this will work in the property.

MOTION: Commissioner Rambur moved to approve the request for a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114). Vice-Chair Campbell seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

c) Request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120).

Staff Presentation:
Planner Ebersole presented the request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120).
Per City Code 10-13-2-2, the Special Use Permit process requires a public hearing in which interested persons have the opportunity to be heard, with regards to the application.

The Commission shall decide on the request within thirty (30) days after the public hearing. If Conditions of Approval are placed on the permit by the Commission, the Administrator shall issue the permit specifically listing such conditions. Conditions shall be implemented within 6 months, or the permit is void.

If the Commission's decision is appealed within fifteen (15) days of the signing of the Findings of Fact, City Council shall set a hearing date to consider all information, testimony, and minutes of the previous hearing to reach a decision on the appeal.

Standards Applicable to Special Uses:

- Will, in fact, constitute a special use as established by zoning requirements for the zone involved.
- Will be harmonious with and in accordance with the general objectives or with any specific objective of a comprehensive plan and/or zoning regulations.
- Will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
- Will not be hazardous or disturbing to existing or future neighboring uses.
- Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons responsible for the

establishment of the proposed use shall be able to provide adequately any such services.

- Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any person, property or to the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
- Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
- Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

Per City Code 10-4-8.2 states a special use permit is required for “any facility with drive-through service” and “permitted retail/trade uses operating outside the hours of seven o’clock (7:00) A.M. to ten o’clock (10:00) P.M.”

10-13-2-2: Upon Granting a Special Use Permit, Conditions May Be Attached To A Special Use Permit Including, But Not Limited To, Those:

1. Minimizing adverse impact on other developments.
2. Controlling the sequence and timing of development.
3. Controlling the duration of development.
4. Assuring that development is maintained properly.
5. Designating the exact location and nature of development.
6. Requiring the provision for on-site or off-site public facilities or services.
7. Requiring more restrictive standards than those generally required in this Title.

The property is zoned C-1 PUD, located within the Canyon Park West No. 1 PUD. The property was home to Golden Corral until mid-2024, and the building is now vacant. The applicant's narrative states the proposed hours of operation are seven (7) days per week, 9:30 A.M. – 1:30 A.M., Sunday – Thursday and 9:30 A.M. – 3:30 A.M., Friday and Saturday. The hours of operation fall outside the allowed retail hours of 7:00 A.M. – 10:00 P.M. and require a Special Use Permit.

The restaurant will be staffed with an average of twelve (12) associates per shift.

The parking requirements for this request are calculated by building size. A building of 3,118 square feet plus 1,209 square foot outdoor seating area requires 43 total parking spaces, per City Code. The Canyon Park West No. 1 PUD has a cross-use parking agreement that allows the center’s parking to be used by all tenants. On the site plan, the applicant has shown the parking for the restaurant at forty-eight (48) spaces, including ADA spaces, exceeding the requirement.

The restaurant will have two (2) drive-through lanes for order taking and food service. Per city code, drive-through lanes have a vehicle stacking requirement of five (5) cars per lane from the first window, pickup window, order board, or other stopping point. The proposed site plan shows the queue in three (3) different phases, depending on the

number of vehicles waiting in the drive-through lanes.

With the grand opening and other busier times of the shopping and tourist seasons, this queue may become overcrowded with vehicles. The applicant has addressed this concern in their narrative by having store associates available to manage the excess vehicle traffic. Staff is deployed with handheld tablets to take multiple orders, moving the vehicles through the drive-through lanes efficiently.

Per the ITE Trip Generation Manual, a fast-food restaurant with a drive-through window will generate 50.94 vehicle trips per PM peak hour (4:00 – 6:00 pm) per 1,000 Sq. Ft. GFA (gross floor area), with a directional distribution of 51% entering, 49% exiting. Based on this statistic, a restaurant of approximately 3,118 sq. ft. can expect up to 154 total vehicle trips per PM peak hour. That calculates out to roughly seventy-nine (79) vehicles entering and seventy-five (75) vehicles exiting per PM peak hour.

A “buzz” may be created with the restaurants' grand opening and extra traffic may be generated to this location. Staff have discussed traffic concerns with the applicant and have added a condition that the restaurant traffic cannot impact the local public roads. Should the traffic become a condition, they would be in violation of the Special Use Permit and would have to figure out a new traffic management solution or the permit would be revoked. Fillmore Street is a private road, while Canyon Springs Road is public. Raising Cane’s and Wood Investment Group will oversee the traffic management through the shopping center and to and from the restaurant. The narrative speaks to their traffic management plan, with staff and possible off-duty police officers directing traffic through the site.

This request is not the first drive-through request that has come before the commission in this area. There are currently multiple drive-through businesses in the surrounding area, which are all responsible for managing their drive-through queues. Swig has a drive-through in the same shopping center as this proposed location. In N Out Burgers was approved for a drive-through in October. The Habit is also located in the same shopping center and has a working drive-through. Across the street, at the Magic Valley Mall, there are two drive-through restaurants (Starbucks and Taco Bell), plus many more along Blue Lakes Blvd. and Pole Line Rd.

The 2016 Comprehensive Plan; “Grow With Us” designates this area as appropriate for “Mixed Use” serving local and regional commercial businesses, which allows for high-density mixed use development in a compact, pedestrian-oriented environment, sitting at intersections of major arterials. Staff has determined the proposed use is compatible with the comprehensive plan and the area, as it is a high-density commercial center with other retail stores and restaurants serving the community at large.

Based on the standards for approval, Staff does not foresee detrimental impacts related to the land use, although traffic congestion may be an issue with the grand opening of a new, highly anticipated business coming to town.
Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

Upon conclusion should the Commission recommend approval of the request, as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.
2. Subject to the traffic flow for the drive-thru does not impact the local public roads.

PZ/Questions & Comments:

- Commissioner Zimmerman asked what the hours were for In-N-Out.
- Planner Ebersole answered they are approved until 1:30 am.

Applicant Presentation:
Michael O'Reilly presented on behalf of the applicant. The site plan shows a right-in right-out set up for traffic to prevent backup. If needed, they will hire off-duty police officers to help facilitate traffic. They have 3 phases of operation as needed.

PZ/Questions & Comments:

- Commissioner Zimmerman asked if customers come off Fillmore how will they enter.
- Michael O'Reilly explained on screen the different options. They are flexible with hours and will close if not busy.
- Chairperson Titus asked for clarification about the extended hours and if they are asking for both drive-thru and lobby, and would close the lobby if slow.
- Michael O'Reilly replied yes.
- Chairperson Titus asked staff if the city has anyone else with 2 lanes. How will applicant deliver food to the second lane.
- Michael O'Reilly answered that the food is hand delivered to cars.
- Commissioner Weatherford asked about the phase 3 vehicle plan and who is facilitating the movement.
- Michael O'Reilly explained the employees or police.

Public Hearing: Opened and closed with no public input.

- Director Spendlove clarified the 154 was incoming traffic, city does not have city police that would work there. The applicant would have to hire independently.
- Chairperson Titus asked to clarify the intention of the escape lane.
- Director Spendlove stated after chick-fil-a had an emergency, an escape lane was needed.
- Chairperson Titus asked the applicant to clarify about employee walking food to the second lane.
- Michael O'Reilly replied that there is no curb just striping.

Discussions Followed:

- Vice-Chair Campbell had concern with hours until 3 but others have the same.

- Commissioner Weatherford stated the city has some 24 hour restaurants and this will be a great addition.
- Chairperson Titus feels this is a good use of the property and there were no public comments.
- Commissioner Zimmerman feels with no public comment this shouldn't be an issue.

MOTION: Commissioner Weatherford moved to approve the request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120). Commissioner Zimmerman seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

d) Request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123).

Staff Presentation:
Planner Ebersole presented the request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123).
The additional height process requires a public hearing to be held in which interested persons have the opportunity to be heard in regard to the application. After the public hearing, the Commission shall make a recommendation to the City Council in the form of approval, conditional approval, or disapproval of the application as presented during the hearing.

Per City Code 10-4-10(C) states “No building shall exceed fifty feet (50’) in height except as provided by Section 10-7-3”.

Per City Code 10-7-3 The council may allow greater than standard building heights with or without extra setback requirements, in the CB, C1, OT, M1 and M2 zoning districts and subdistricts. A request for additional height shall follow the public hearing process for zoning map amendments as described in subsection 10-4-5(B) and 10-14-7 of this title.

After receiving the recommendation from the Commission, the City Council shall hold a public hearing. After the public hearing, the Council may approve, conditionally approve, or disapprove the application as presented.
In February 2011, a non-conforming expansion permit was issued to Glanbia Foods for an expansion of their operations at this location.

In December 2014, the city council approved additional building height for two other silos on the subject property.

In August 2021, the city council approved additional building height for an additional silo on the subject property.
The applicant wants to add additional 50,000 gallon raw milk silos for milk segregation,

to better serve their needs at the facility on the subject property. The silos will be a maximum of 75 feet tall. The first silo is expected to be the same height as Silo #8.

The addition of the silos will not have detrimental impacts on surrounding properties, due to traffic, noise, glare, odor, or fumes and/or vibrations. There is no need for additional employees, and no change to the hours of operation.

The location of the silo is considerably set back from the current roadway, and from any nearby residential properties.

Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

Upon conclusion, should the Commission recommend approval to City Council of the request as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

PZ/Questions & Comments:

- Chairperson Titus asked where the new one is going.
- Planner Ebersole showed on screen they are in the back of the current ones.

Applicant Presentation:
Kim Jasper presented on behalf of the applicant. They are asking for 2 additional feet for the pads.

PZ/Questions & Comments:

- Chairperson Titus asked for clarification if they are asking for 2 new silos.
- Kim Jasper replied yes.

Public Hearing: Opened and closed with no public input

Discussions Followed:

Commission feels that with the city approving the same heights for other silos, this should not be an issue.

MOTION: Vice-Chair Campbell moved to approve the request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123). Commissioner Weatherford seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

6) Upcoming Meeting(s)

a) December 17, 2024

7) Adjournment
The meeting adjourned at 06:58 PM

Jody Green

Jody Green, Planning Technician

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: William Klaver, Senior City Planner

ACTION ITEM

Request:

Request to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).

Time Estimate:

Approximately 5-10 minutes with questions/comments to follow.

Background:

The applicant, Falls Crossing Formally (Campus Park), represented by Jared Nielson, is proposing to amend a Planned Unit Development Agreement (PUD), "Campus Park" located at approximately 122 Falls Ave W, on two (2) parcel containing approximately 7.27 acres (more or less). This proposed amendment will modify the PUD master plan square footage allowance by allowing an additional residential building footprint of approximately 8,000 SF.

On December 3, 2024, Planning and Zoning Commission recommended approval 5-0.

Approval Process:

Per City Code 10-6-1.7 (B) The applicant is required to present a preliminary review prior to a public hearing to the Planning and Zoning Commission in which the Commission may give suggestions and ask questions of the applicant about the proposed ZDA.

Per City Code 10-6-1.7(E) Approval of a ZDA shall be based on the following standards: the proposed uses are not detrimental to surrounding properties; deviations from Title 10 shall be warranted by the design of the conceptual plan; conformance to the Comprehensive Plan, and existing and/or proposed infrastructure must be adequate for the project.

Per City Code 10-14-1 thru 8 Any application for a zoning district change shall follow the procedures outlined in these sections.

Budget Impact:

N/A

Regulatory Impact:

Per City Code 10-6-1.4 (B) The ZDA shall conform to all sections of this title unless specifically addressed in the written commitment document. All applications to the city shall list all requested variations from the standard requirements.

Should this Zoning Development Agreement amendment be approved, a residential building footprint of 8,000 SF may be placed upon the property.

History:

In 2005, Campus Park PUD was created and established the land use and zoning entitlements.

Analysis:

The proposed amendment is to increase the building coverage of the sight by allowing for another building consisting approximately 8,000 SF. Per 10-6-1.6, increasing the building coverage of the sight from the approved Conceptual Development Plan requires a recommendation from the Planning and Zoning Commission to the City Council. The Council makes the decision.

The applicant is not requesting to increase the density, building height, reduction in off-street parking ratio, reducing setbacks, reduction in open space, or the design theme. This approval grants the right for the developer to apply for a building permit for a new residential building, while keeping all regulations (i.e. parking ratio, height, density, etc.) the same.

The City of Twin Falls Comprehensive Plan calls for Commercial and Town Neighborhood type uses. Commercial uses denoted in the Comprehensive Plan are Highway-oriented, large-format retail, hotels, restaurants, and other retail. Town Neighborhood uses denoted in the Comprehensive Plan are primarily residential, such as single family, triplex, schools, etc. City Staff believe this amendment would be in line with the City's Comprehensive Plan.

Staff does not see detrimental impacts with the request, and would recommend approval.

Conclusion:

Upon conclusion, the Council is tasked with making a decision on the zoning designation being requested by the applicant.

The Council may approve as presented, approve with conditions, deny, or table the request to acquire new information. Should the Council approve the request, Staff recommends the following condition:

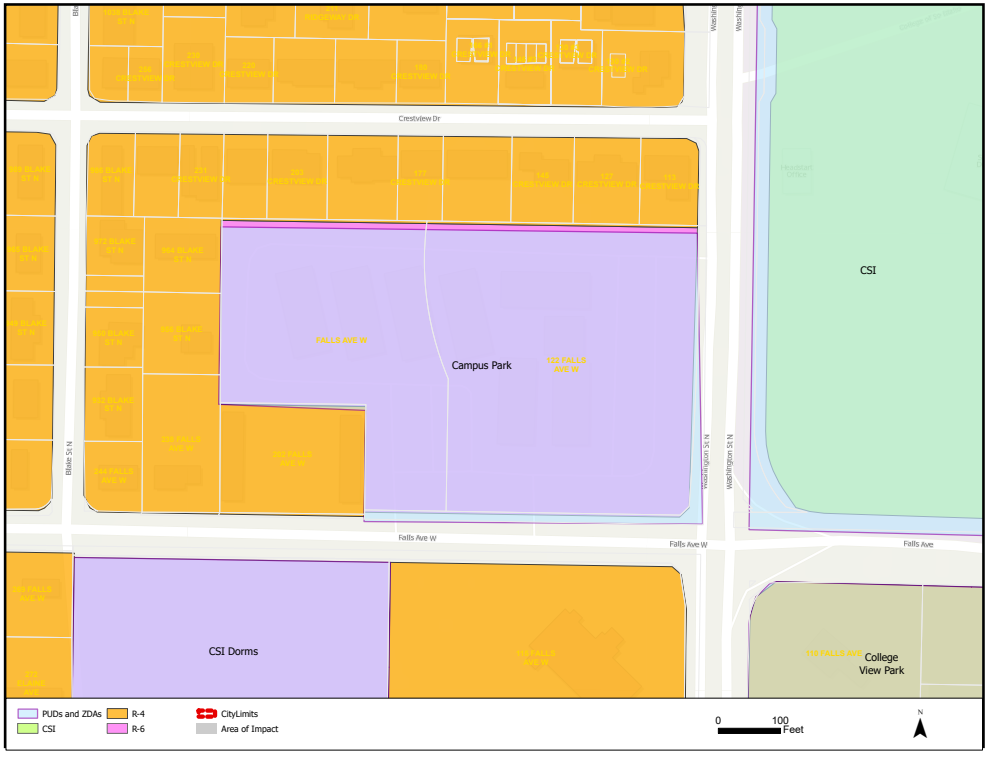
1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

Attachments:

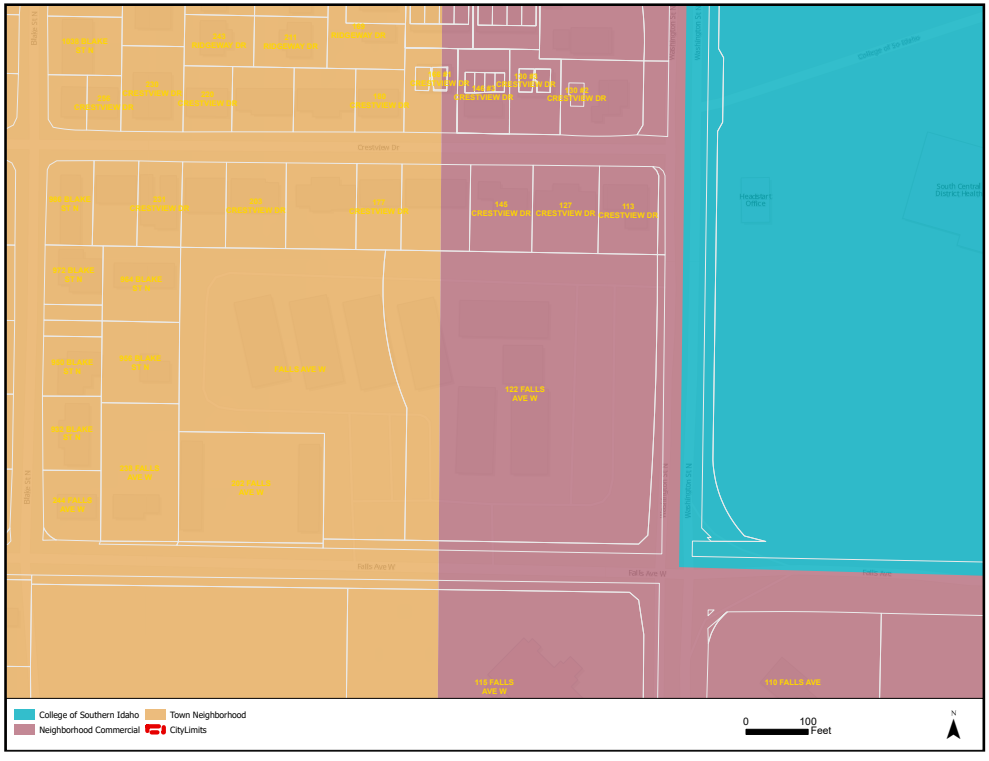
1. PZ24-0114 Vicinity Map
2. PZ24-0114 Presentation Map
3. PZ24-0114 Aerial Map
4. PZ24-0114 Google Street View
5. PZ24-0114 Applicant Exhibits
6. PZ24-0114 December 3, 2024 PZC Minutes

Vicinity Map
N College Rd W
N College Rd
Park Meadows Dr
Parkway Dr
Sunburst St
Starfire St
Monaco St
Blake St N
College of Southern Idaho
College of So Idaho
Pauline Coulee
Frontier Rd
Ridgeway Dr
Crestview Dr
Wendell St
Sparks St N
Falls Ave W
Washington St N
Meadows Dr
Falls Ave
Robbins Ave
Caswell Ave W
Monroe St
Quincy St
Harrison St
N
0
1,000
Feet
Parcels
Esri Community Maps Contributors, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS, Maxar

ZONING MAP



FUTURE LAND USE MAP



Zoning

Current Zoning:	R-6 PUD
Current Land Use:	Residential
Proposed Zoning:	R-6 PUD
Proposed Land Use:	Residential

Surrounding Area

North:	Residential (R-4)
South:	Residential (R-4)
East:	Educational (CSI)
West:	Residential (R-4)

Regulations

Twin Falls Municipal Code Section(s) 10-6-1

Future Land Use Category

Commercial: Highway-oriented, large-format retail, hotels, restaurants, and other retail.

Town Neighborhood: Primarily residential in character with a desired land use mixture of single family, duplex, triplex, parks and recreation facilities, schools, and civic facilities.

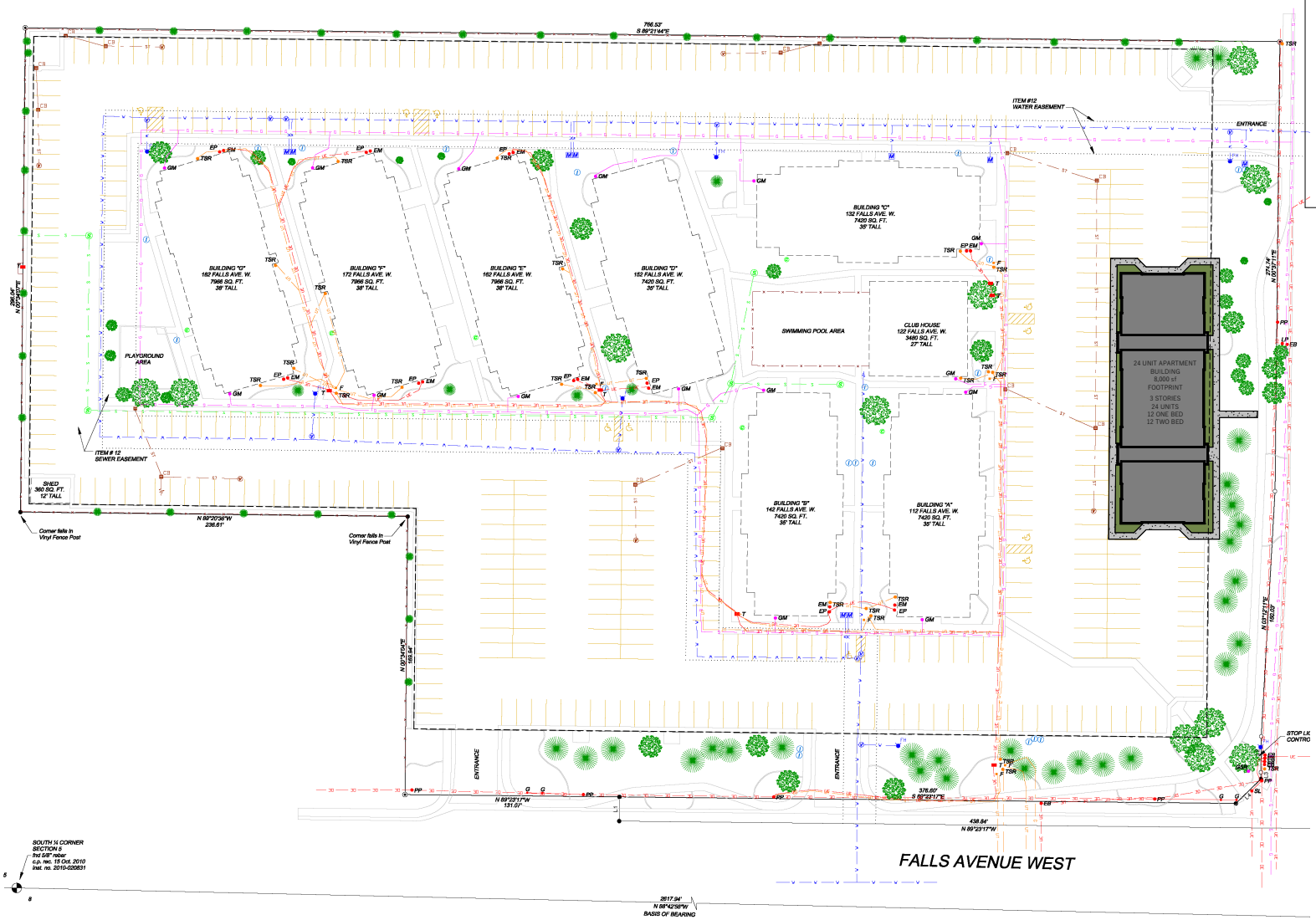
Aerial Map
Ridgeway Dr
Blake St N
Crestview Dr
College of So Idaho
Headstart Office
South Central District Health
Washington St N
Blake St N
Falls Ave W
Falls Ave W
Falls Ave
N
0
320
Feet
Parcels
Maxar, Microsoft, Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS

Figure 1: Looking North

Figure 2: Looking West

Figure 3: Looking South

Figure 4: Looking East



8,000 sf FOOTPRINT BUILDING

ORIGINAL PARKING SPACES:	**494**
EXISTING BUILDINGS PARKING REQUIRED:	**408**
STALLS NEW BUILDING WILL REMOVE:	**38**
NEW BUILDING PARKING REQUIREMENT (24 UNITS, 2 STALLS EACH):	**48**
NEW PARKING REQUIRED:	**456**
TOTAL PARKING SPACES PROVIDED:	**456**

1 A0.2 ARCHITECTURAL SITE PLAN
NARROW BUILDING
1" = 30'-0"

CONSULTANT

FALLS CROSSING
TWIN FALLS, IDAHO

ISSUED:
JUNE 14, 2024

REVISIONS:
NO. DATE

STAMP

PROJECT NUMBER:
00000

ARCHITECTURAL SITE PLAN - NARROW BUILDING

A0.2

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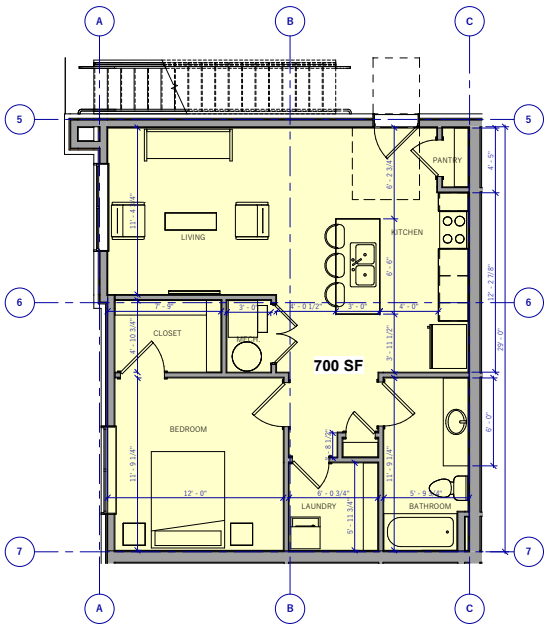
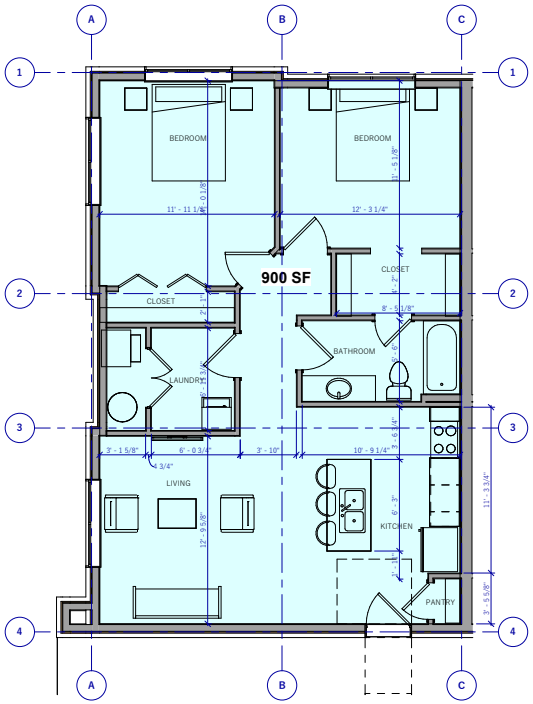
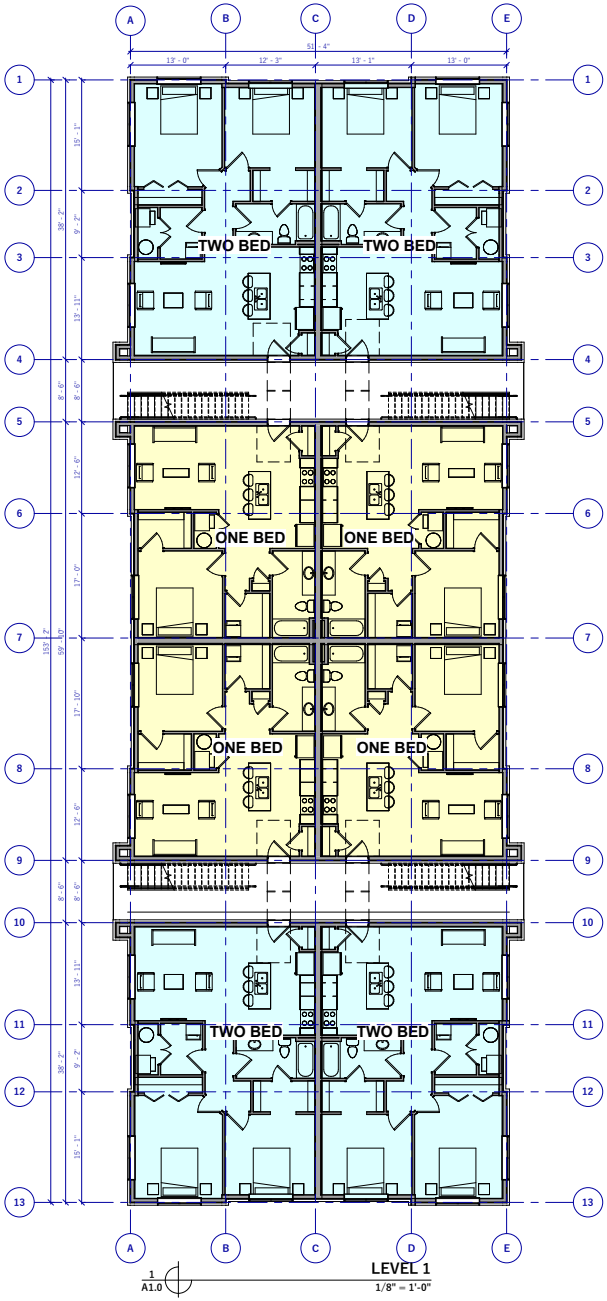
JZW ARCHITECTS



3 A1.0 ONE BED 1/4" = 1'-0"



2 A1.0 TWO BED 1/4" = 1'-0"



1 A1.0 LEVEL 1 1/8" = 1'-0"

CONSULTANT

FALLS CROSSING
TWIN FALLS, IDAHO

ISSUED:
JUNE 14, 2024

REVISIONS:
NO. DATE

STAMP

PROJECT NUMBER:
00000

BUILDING PLANS

A1.0

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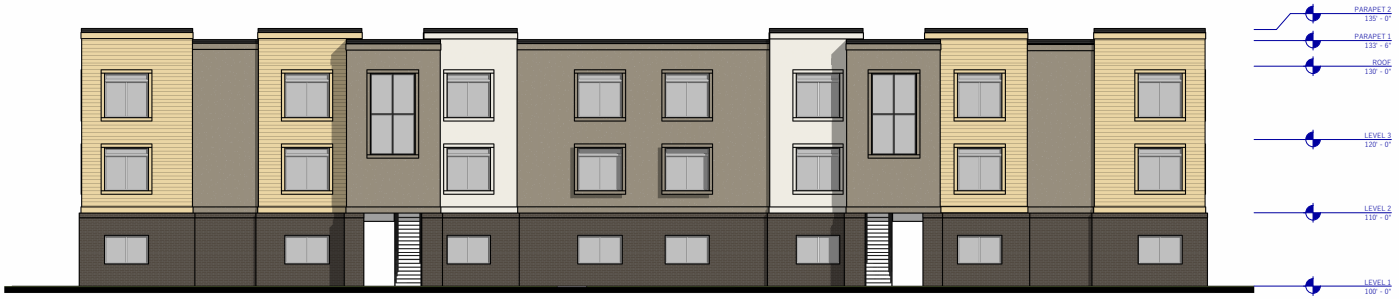
JZW ARCHITECTS

4 A2.1 **NORTH ELEVATION**
1/8" = 1'-0"

1 A2.1 **SOUTH ELEVATION**
1/8" = 1'-0"

2 A2.1 **WEST ELEVATION**
1/8" = 1'-0"



3 A2.1 **EAST ELEVATION**
1/8" = 1'-0"

GENERAL NOTES - ELEVATIONS

A SEE GENERAL NOTES FOR ADDITIONAL REQUIREMENTS.
B COORDINATE WINDOW HEIGHTS WITH WINDOW SCHEDULE.
C SEE ROOF PLAN FOR ALL ROOF SLOPES

KEYED NOTES

CONSULTANT

FALLS CROSSING
TWIN FALLS, IDAHO

ISSUED:
JUNE 14, 2024

REVISIONS:
NO. DATE

STAMP

PROJECT NUMBER:
00000

ELEVATIONS

A2.1

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JZW ARCHITECTS

1
A9.1
PERSPECTIVE

CONSULTANT

FALLS CROSSING
TWIN FALLS, IDAHO

ISSUED:
JUNE 14, 2024

REVISIONS:
NO. DATE

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PROJECT NUMBER:
00000

3D REPRESENTATIONS

A9.1

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JZW ARCHITECTS

Twin Falls Planning & Zoning Commission
Minutes

Tuesday, December 3, 2024, 6:00 PM

203 Main Ave East
Twin Falls, ID 83303

Members -
City Limits: Chairperson Danielle Titus; Vice-Chair Cortney Campbell; Todd Rambur; Robyn Weatherford; Kelly Herrgesell; Tiffany Zimmerman
Area of Impact:

1) **Confirmation of Quorum/Call Meeting to Order**
Chairperson Titus called the meeting to order at 06:00 PM
Members Attending: Titus, Campbell, Rambur, Weatherford, Zimmerman
Staff Attending: Spendlove, Klaver, Ebersole, Green, Vitek

2) **Conflict of Interest Declaration**

3) **Consent Calendar**

a) Approval of minutes from the following meeting: November 19, 2024
Vice-Chair Campbell made a motion to approve the consent calendar, as presented. Commissioner Rambur seconded the motion.

4) **Items of Consideration**

5) **Public Hearings**

a) Request a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)

Staff Presentation:
Senior Planner Klaver presented the request for a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)
Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

A. Requests for an amendment to this title shall be submitted to the commission which shall evaluate the request to determine the extent and nature of the amendment requested;
B. If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and
C. If the request is not in accordance with a comprehensive plan, the request shall be submitted to the commission or, in its absence, the council which shall recommend and the council may adopt or reject an amendment to a

comprehensive plan under the notice and hearing procedures provided in section 10-7-20 of this title.

Zoning Map Amendment: The commission, prior to recommending a zoning map amendment that is in accordance with a comprehensive plan to the council, shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. Notice for public hearings shall be provided as set forth in section 10-7-20 of this title.
In 1988, the Fire Station received approval for a sign and records show the zoning being the current zoning designation of R-4. In 2005, the Fire Station was expanded to accommodate two brush trucks by building a 2,000 Square Foot garage.

The subject property was the old Fire Station #3, which has stopped being used since the new Fire Station #3 was finished in February 2024.
The City of Twin Falls would like to rezone the property located generally at 929 Washington Street South from Residential Medium Density (R-4) to Commercial Highway (C-1). The property is located on the intersection of two (2) arterials, Washington Street South and Orchard Drive. The busy intersection makes this property better suited for the C-1 district, which is intended to provide for commercial activities of various sizes from large malls to small shops, fast food restaurants and tourist accommodations. This district is designed for application on major streets or portions thereof. Furthermore, the property is surrounded by the C-1 zoning district on the south, east, and west.

How the proposed zoning change relates to the Comprehensive Plan.

- The future land use map of the comprehensive plan calls out the area being a mixed-use area. The mixed-use designation describes this area as anchored by grocery store, civic, or entertainment uses that allows for high-intensity mixed use development in a compact, pedestrian oriented environment. The desired mix of land uses is retail, office, restaurants, civic, hotels, apartments, vertical mixed use, etc. All these uses align with the uses in which the C-1 zone allows by right or with a Special Use Permit.

Compatibility with the surrounding area.

- The area is surrounded by C-1 zoning. Immediately to the south and east is zoned C-1 with the Orchard Park Planned Unit Development. This development is housing the fire station, Swenson's Market, a Coffee shop, with other development in the works. Across the Washington St S, to the west, is undeveloped land that is zoned C-1 with a family dollar directly to the south of the vacant land. On the North East corner of Orchard and Washington St S is residential property zoned R-1. On the North West corner of the Orchard and Washington St S is C-1 zoned property that has an Oasis gas station.

Explanation of the intended use/development of the property.

- The intended or desired use of this property is follow the desired uses outlined in the Comprehensive Plan's future land use designation of Mixed-use as stated above in question 1. We believe this rezone request would allow for the

flexibility to make that desire a reality.

Upon conclusion, the commission is tasked with making a recommendation to the City Council on the zoning designation being requested.

The commission may recommend the proposed zone change from R-2 to C-1, recommend the R-2 zoning be maintained, recommend an alternative zoning designation, or table the request to acquire additional information.

PZ/Questions & Comments:

- Commissioner Rambur asked if there were any specific plans.
- Senior Planner Klaver replied that there are none but the zone change would be beneficial in the future.
- Commissioner Rambur asked if the city is planning on keeping or selling the property.
- Senior Planner Klaver stated they plan on selling.
- Chairperson Titus asked about the R-4 zone and how the fire station was permitted.
- Senior Planner Klaver answered that a Special Use Permit was given.

Public Hearing: Opened and closed with no public input.

Discussions Followed:

Commission feels this will be a good fit with the surrounding.

MOTION: Vice-Chair Campbell moved to approve the request for a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102). Commissioner Weatherford seconded the motion. Roll call vote showed all members present voted.

Approved 5 to 0.

b) Request a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).

Staff Presentation:
Senior Planner Klaver presented the request for a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).
Per City Code 10-6-1.7 (B) The applicant is required to present a preliminary review prior to a public hearing to the Planning and Zoning Commission in which the Commission may give suggestions and ask questions of the applicant about the proposed ZDA.

Per City Code 10-6-1.7(E) Approval of a ZDA shall be based on the following

standards: the proposed uses are not detrimental to surrounding properties; deviations from Title 10 shall be warranted by the design of the conceptual plan; conformance to the Comprehensive Plan, and existing and/or proposed infrastructure must be adequate for the project.

Per City Code 10-14-1 thru 8 Any application for a zoning district change shall follow the procedures outlined in these sections.
In 2005, Campus Park PUD was created and established the land use and zoning entitlements.
The proposed amendment is to increase the building coverage of the sight by allowing for another building consisting approximately 8,000 SF. Per 10-6-1.6, increasing the building coverage of the sight from the approved Conceptual Development Plan requires a recommendation from the Planning and Zoning Commission to the City Council. The Council makes the decision.

The applicant is not requesting to increase the density, building height, reduction in off-street parking ratio, reducing setbacks, reduction in open space, or the design theme. This approval grants the right for the developer to apply for a building permit for a new residential building, while keeping all regulations (i.e. parking ratio, height, density, etc.) the same.

The City of Twin Falls Comprehensive Plan calls for Commercial and Town Neighborhood type uses. Commercial uses denoted in the Comprehensive Plan are Highway-oriented, large-format retail, hotels, restaurants, and other retail. Town Neighborhood uses denoted in the Comprehensive Plan are primarily residential, such as single family, triplex, schools, etc. City Staff believe this amendment would be in line with the City's Comprehensive Plan.

Staff does not see detrimental impacts with the request, and would recommend approval.
Upon conclusion, the commission is tasked with making a recommendation to the City Council on the zoning designation being requested by the applicant.

The commission may recommend the approval as presented, recommend approval with conditions, recommend denial, or table the request to acquire new information. Should the commission recommend approval of the request, Staff recommends the following condition:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

PZ/Questions & Comments:

- Vice-Chair Campbell asked about parking.
- Senior Planner Klaver stated it still meets standards and is included when obtaining the building permit.

Public Hearing: Opened and closed with no public input

Discussions Followed:

Commission feels this will work in the property.

MOTION: Commissioner Rambur moved to approve the request for a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114). Vice-Chair Campbell seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

c) Request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120).

Staff Presentation:
Planner Ebersole presented the request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120).
Per City Code 10-13-2-2, the Special Use Permit process requires a public hearing in which interested persons have the opportunity to be heard, with regards to the application.

The Commission shall decide on the request within thirty (30) days after the public hearing. If Conditions of Approval are placed on the permit by the Commission, the Administrator shall issue the permit specifically listing such conditions. Conditions shall be implemented within 6 months, or the permit is void.

If the Commission's decision is appealed within fifteen (15) days of the signing of the Findings of Fact, City Council shall set a hearing date to consider all information, testimony, and minutes of the previous hearing to reach a decision on the appeal.

Standards Applicable to Special Uses:

- Will, in fact, constitute a special use as established by zoning requirements for the zone involved.
- Will be harmonious with and in accordance with the general objectives or with any specific objective of a comprehensive plan and/or zoning regulations.
- Will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
- Will not be hazardous or disturbing to existing or future neighboring uses.
- Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons responsible for the

establishment of the proposed use shall be able to provide adequately any such services.

- Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any person, property or to the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
- Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
- Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

Per City Code 10-4-8.2 states a special use permit is required for “any facility with drive-through service” and “permitted retail/trade uses operating outside the hours of seven o’clock (7:00) A.M. to ten o’clock (10:00) P.M.”

10-13-2-2: Upon Granting a Special Use Permit, Conditions May Be Attached To A Special Use Permit Including, But Not Limited To, Those:

1. Minimizing adverse impact on other developments.
2. Controlling the sequence and timing of development.
3. Controlling the duration of development.
4. Assuring that development is maintained properly.
5. Designating the exact location and nature of development.
6. Requiring the provision for on-site or off-site public facilities or services.
7. Requiring more restrictive standards than those generally required in this Title.

The property is zoned C-1 PUD, located within the Canyon Park West No. 1 PUD. The property was home to Golden Corral until mid-2024, and the building is now vacant. The applicant's narrative states the proposed hours of operation are seven (7) days per week, 9:30 A.M. – 1:30 A.M., Sunday – Thursday and 9:30 A.M. – 3:30 A.M., Friday and Saturday. The hours of operation fall outside the allowed retail hours of 7:00 A.M. – 10:00 P.M. and require a Special Use Permit.

The restaurant will be staffed with an average of twelve (12) associates per shift.

The parking requirements for this request are calculated by building size. A building of 3,118 square feet plus 1,209 square foot outdoor seating area requires 43 total parking spaces, per City Code. The Canyon Park West No. 1 PUD has a cross-use parking agreement that allows the center’s parking to be used by all tenants. On the site plan, the applicant has shown the parking for the restaurant at forty-eight (48) spaces, including ADA spaces, exceeding the requirement.

The restaurant will have two (2) drive-through lanes for order taking and food service. Per city code, drive-through lanes have a vehicle stacking requirement of five (5) cars per lane from the first window, pickup window, order board, or other stopping point. The proposed site plan shows the queue in three (3) different phases, depending on the

number of vehicles waiting in the drive-through lanes.

With the grand opening and other busier times of the shopping and tourist seasons, this queue may become overcrowded with vehicles. The applicant has addressed this concern in their narrative by having store associates available to manage the excess vehicle traffic. Staff is deployed with handheld tablets to take multiple orders, moving the vehicles through the drive-through lanes efficiently.

Per the ITE Trip Generation Manual, a fast-food restaurant with a drive-through window will generate 50.94 vehicle trips per PM peak hour (4:00 – 6:00 pm) per 1,000 Sq. Ft. GFA (gross floor area), with a directional distribution of 51% entering, 49% exiting. Based on this statistic, a restaurant of approximately 3,118 sq. ft. can expect up to 154 total vehicle trips per PM peak hour. That calculates out to roughly seventy-nine (79) vehicles entering and seventy-five (75) vehicles exiting per PM peak hour.

A “buzz” may be created with the restaurants' grand opening and extra traffic may be generated to this location. Staff have discussed traffic concerns with the applicant and have added a condition that the restaurant traffic cannot impact the local public roads. Should the traffic become a condition, they would be in violation of the Special Use Permit and would have to figure out a new traffic management solution or the permit would be revoked. Fillmore Street is a private road, while Canyon Springs Road is public. Raising Cane’s and Wood Investment Group will oversee the traffic management through the shopping center and to and from the restaurant. The narrative speaks to their traffic management plan, with staff and possible off-duty police officers directing traffic through the site.

This request is not the first drive-through request that has come before the commission in this area. There are currently multiple drive-through businesses in the surrounding area, which are all responsible for managing their drive-through queues. Swig has a drive-through in the same shopping center as this proposed location. In N Out Burgers was approved for a drive-through in October. The Habit is also located in the same shopping center and has a working drive-through. Across the street, at the Magic Valley Mall, there are two drive-through restaurants (Starbucks and Taco Bell), plus many more along Blue Lakes Blvd. and Pole Line Rd.

The 2016 Comprehensive Plan; “Grow With Us” designates this area as appropriate for “Mixed Use” serving local and regional commercial businesses, which allows for high-density mixed use development in a compact, pedestrian-oriented environment, sitting at intersections of major arterials. Staff has determined the proposed use is compatible with the comprehensive plan and the area, as it is a high-density commercial center with other retail stores and restaurants serving the community at large.

Based on the standards for approval, Staff does not foresee detrimental impacts related to the land use, although traffic congestion may be an issue with the grand opening of a new, highly anticipated business coming to town.
Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

Upon conclusion should the Commission recommend approval of the request, as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.
2. Subject to the traffic flow for the drive-thru does not impact the local public roads.

PZ/Questions & Comments:

- Commissioner Zimmerman asked what the hours were for In-N-Out.
- Planner Ebersole answered they are approved until 1:30 am.

Applicant Presentation:
Michael O'Reilly presented on behalf of the applicant. The site plan shows a right-in right-out set up for traffic to prevent backup. If needed, they will hire off-duty police officers to help facilitate traffic. They have 3 phases of operation as needed.

PZ/Questions & Comments:

- Commissioner Zimmerman asked if customers come off Fillmore how will they enter.
- Michael O'Reilly explained on screen the different options. They are flexible with hours and will close if not busy.
- Chairperson Titus asked for clarification about the extended hours and if they are asking for both drive-thru and lobby, and would close the lobby if slow.
- Michael O'Reilly replied yes.
- Chairperson Titus asked staff if the city has anyone else with 2 lanes. How will applicant deliver food to the second lane.
- Michael O'Reilly answered that the food is hand delivered to cars.
- Commissioner Weatherford asked about the phase 3 vehicle plan and who is facilitating the movement.
- Michael O'Reilly explained the employees or police.

Public Hearing: Opened and closed with no public input.

- Director Spendlove clarified the 154 was incoming traffic, city does not have city police that would work there. The applicant would have to hire independently.
- Chairperson Titus asked to clarify the intention of the escape lane.
- Director Spendlove stated after chick-fil-a had an emergency, an escape lane was needed.
- Chairperson Titus asked the applicant to clarify about employee walking food to the second lane.
- Michael O'Reilly replied that there is no curb just striping.

Discussions Followed:

- Vice-Chair Campbell had concern with hours until 3 but others have the same.

- Commissioner Weatherford stated the city has some 24 hour restaurants and this will be a great addition.
- Chairperson Titus feels this is a good use of the property and there were no public comments.
- Commissioner Zimmerman feels with no public comment this shouldn't be an issue.

MOTION: Commissioner Weatherford moved to approve the request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120). Commissioner Zimmerman seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

d) Request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123).

Staff Presentation:
Planner Ebersole presented the request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123).
The additional height process requires a public hearing to be held in which interested persons have the opportunity to be heard in regard to the application. After the public hearing, the Commission shall make a recommendation to the City Council in the form of approval, conditional approval, or disapproval of the application as presented during the hearing.

Per City Code 10-4-10(C) states “No building shall exceed fifty feet (50’) in height except as provided by Section 10-7-3”.

Per City Code 10-7-3 The council may allow greater than standard building heights with or without extra setback requirements, in the CB, C1, OT, M1 and M2 zoning districts and subdistricts. A request for additional height shall follow the public hearing process for zoning map amendments as described in subsection 10-4-5(B) and 10-14-7 of this title.

After receiving the recommendation from the Commission, the City Council shall hold a public hearing. After the public hearing, the Council may approve, conditionally approve, or disapprove the application as presented.
In February 2011, a non-conforming expansion permit was issued to Glanbia Foods for an expansion of their operations at this location.

In December 2014, the city council approved additional building height for two other silos on the subject property.

In August 2021, the city council approved additional building height for an additional silo on the subject property.
The applicant wants to add additional 50,000 gallon raw milk silos for milk segregation,

to better serve their needs at the facility on the subject property. The silos will be a maximum of 75 feet tall. The first silo is expected to be the same height as Silo #8.

The addition of the silos will not have detrimental impacts on surrounding properties, due to traffic, noise, glare, odor, or fumes and/or vibrations. There is no need for additional employees, and no change to the hours of operation.

The location of the silo is considerably set back from the current roadway, and from any nearby residential properties.

Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

Upon conclusion, should the Commission recommend approval to City Council of the request as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

PZ/Questions & Comments:

- Chairperson Titus asked where the new one is going.
- Planner Ebersole showed on screen they are in the back of the current ones.

Applicant Presentation:
Kim Jasper presented on behalf of the applicant. They are asking for 2 additional feet for the pads.

PZ/Questions & Comments:

- Chairperson Titus asked for clarification if they are asking for 2 new silos.
- Kim Jasper replied yes.

Public Hearing: Opened and closed with no public input

Discussions Followed:

Commission feels that with the city approving the same heights for other silos, this should not be an issue.

MOTION: Vice-Chair Campbell moved to approve the request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123). Commissioner Weatherford seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

6) Upcoming Meeting(s)

a) December 17, 2024

7) Adjournment
The meeting adjourned at 06:58 PM

Jody Green

Jody Green, Planning Technician

Date: Monday, January 6, 2025

To: Honorable Mayor and City Council

From: William Klaver, Senior City Planner

ACTION ITEM

Request:

Request to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)

Time Estimate:

Approximately 5-10 minutes with questions/comments to follow.

Background:

This is a request from The City of Twin Falls for a recommendation on a zoning district change from R-4 to C-1 for 1.023 (+/-) acres located approximately at 929 Washington St S.

On December 3, 2024, Planning and Zoning Commission recommended approval 5-0.

Approval Process:

Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

A. Requests for an amendment to this title shall be submitted to the commission which shall evaluate the request to determine the extent and nature of the amendment requested;
B. If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and
C. If the request is not in accordance with a comprehensive plan, the request shall be submitted to the commission or, in its absence, the council which shall recommend and the council may adopt or reject an amendment to a comprehensive plan under the notice and hearing procedures provided in section 10-7-20 of this title.

Zoning Map Amendment: The commission, prior to recommending a zoning map amendment that is in accordance with a comprehensive plan to the council, shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. Notice for public hearings shall be provided as set forth in section 10-7-20 of this title.

Budget Impact:

N/A

Regulatory Impact:

Approving this Zoning District Change will entitle the property with Commercial Highway (C-1) zoning regulations.

History:

In 1988, the Fire Station received approval for a sign and records show the zoning being the current zoning designation of R-4. In 2005, the Fire Station was expanded to accommodate two brush trucks by building a 2,000 Square Foot garage.

The subject property was the old Fire Station #3, which has stopped being used since the new Fire Station #3 was finished in February 2024.

Analysis:

The City of Twin Falls would like to rezone the property located generally at 929 Washington Street South from Residential Medium Density (R-4) to Commercial Highway (C-1). The property is located on the intersection of two (2) arterials, Washington Street South and Orchard Drive. The busy intersection makes this property better suited for the C-1 district, which is intended to provide for commercial activities of various sizes from large malls to small shops, fast food restaurants and tourist accommodations. This district is designed for application on major streets or portions thereof. Furthermore, the property is surrounded by the C-1 zoning district on the south, east, and west.

How the proposed zoning change relates to the Comprehensive Plan.

- The future land use map of the comprehensive plan calls out the area being a mixed-use area. The mixed-use designation describes this area as anchored by grocery store, civic, or entertainment uses that allows for high-intensity mixed use development in a compact, pedestrian oriented environment. The desired mix of land uses is retail, office, restaurants, civic, hotels, apartments, vertical mixed use, etc. All these uses align with the uses in which the C-1 zone allows by right or with a Special Use Permit.

Compatibility with the surrounding area.

- The area is surrounded by C-1 zoning. Immediately to the south and east is zoned C-1 with the Orchard Park Planned Unit Development. This development is housing the fire station, Swenson's Market, a Coffee shop, with other development in the works. Across the Washington St S, to the west, is undeveloped land that is zoned C-1 with a family dollar directly to the south of the vacant land. On the North East corner of Orchard and Washington St S is residential property zoned R-1. On the North West corner of the Orchard and Washington St S is C-1 zoned property that has an Oasis gas station.

Explanation of the intended use/development of the property.

- The intended or desired use of this property is follow the desired uses outlined in the Comprehensive Plan's future land use designation of Mixed-use as stated above in question 1. We believe this rezone request would allow for the flexibility to make that desire a reality.

Conclusion:

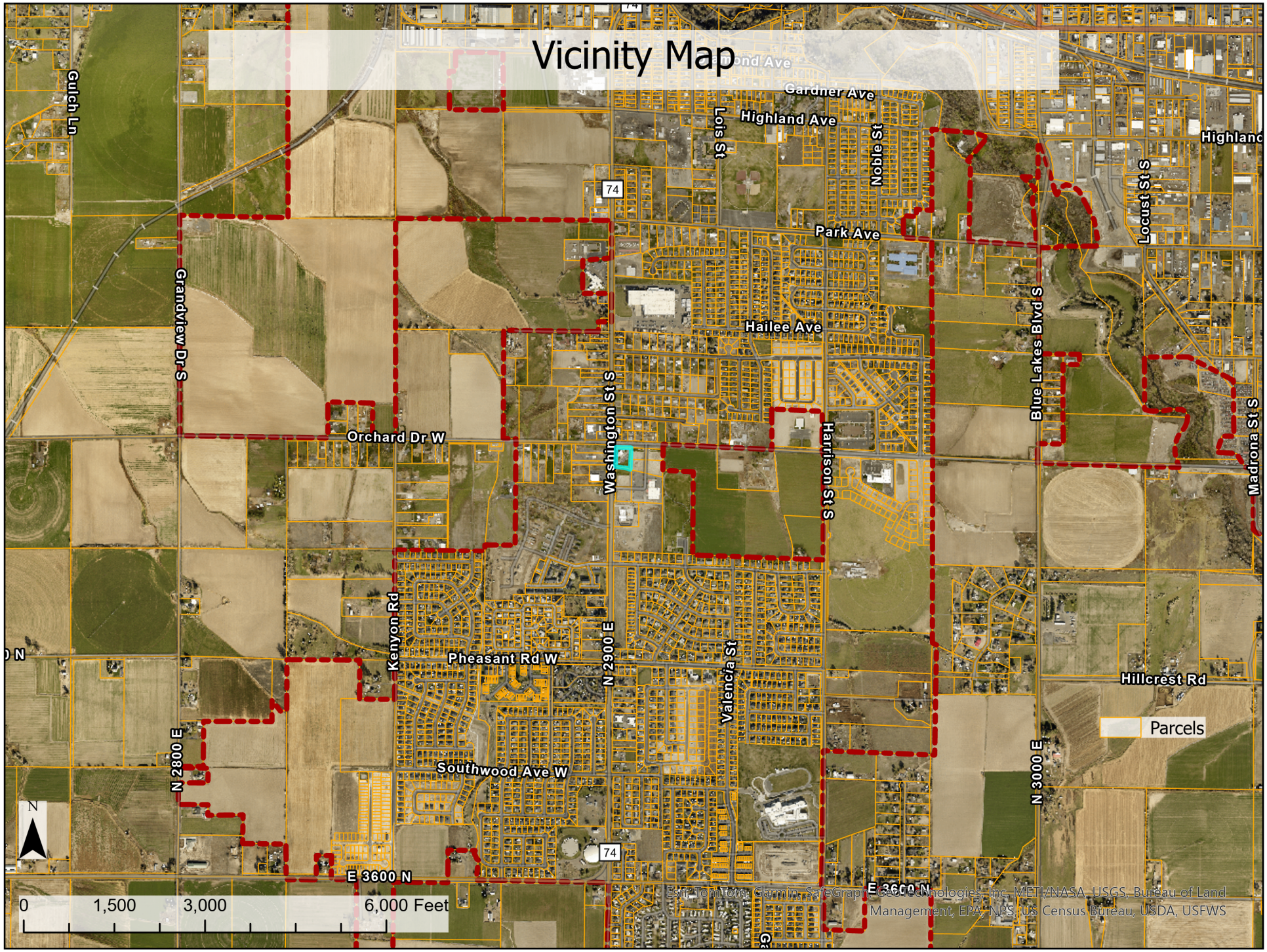
Upon conclusion, the Council is tasked with making a decision on the zoning designation being requested.

The Council may approve the proposed zone change from R-2 to C-1, deny the proposed zone change and keep the R-2 zoning, approve an alternative zoning designation, or table the request to acquire additional information.

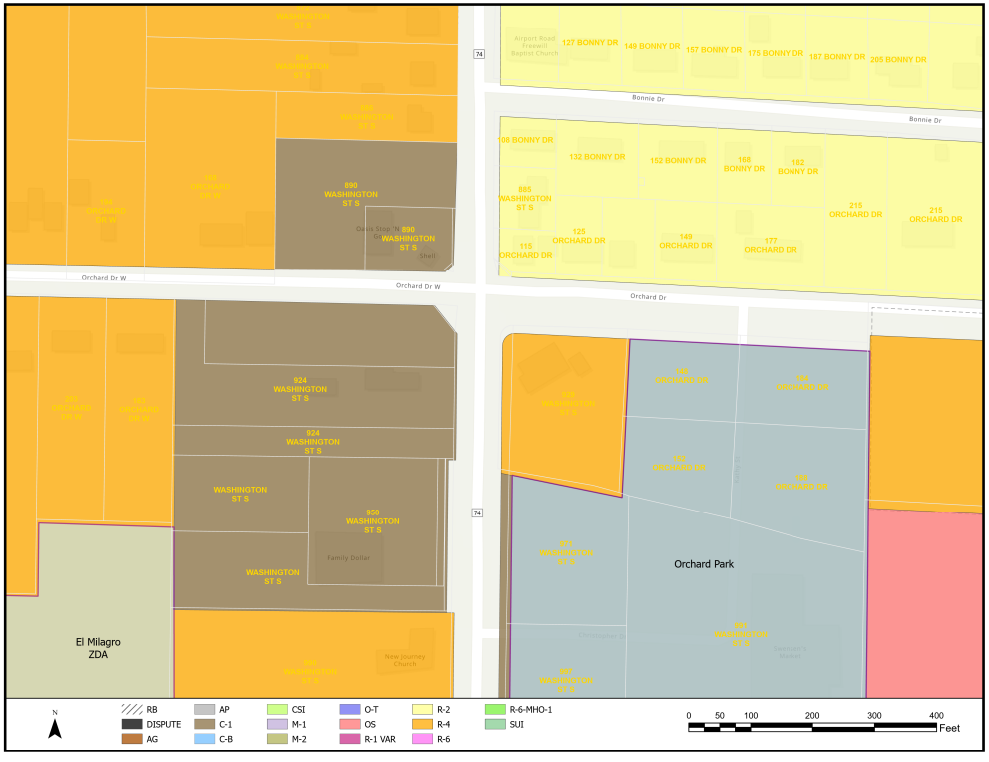
Attachments:

1. PZ24-0102 VicinityMap
2. PZ24-0102 Presentation Map
3. PZ24-0102 Google Street View
4. PZ24-0102 R-4 & C-1 Land Use Comparison

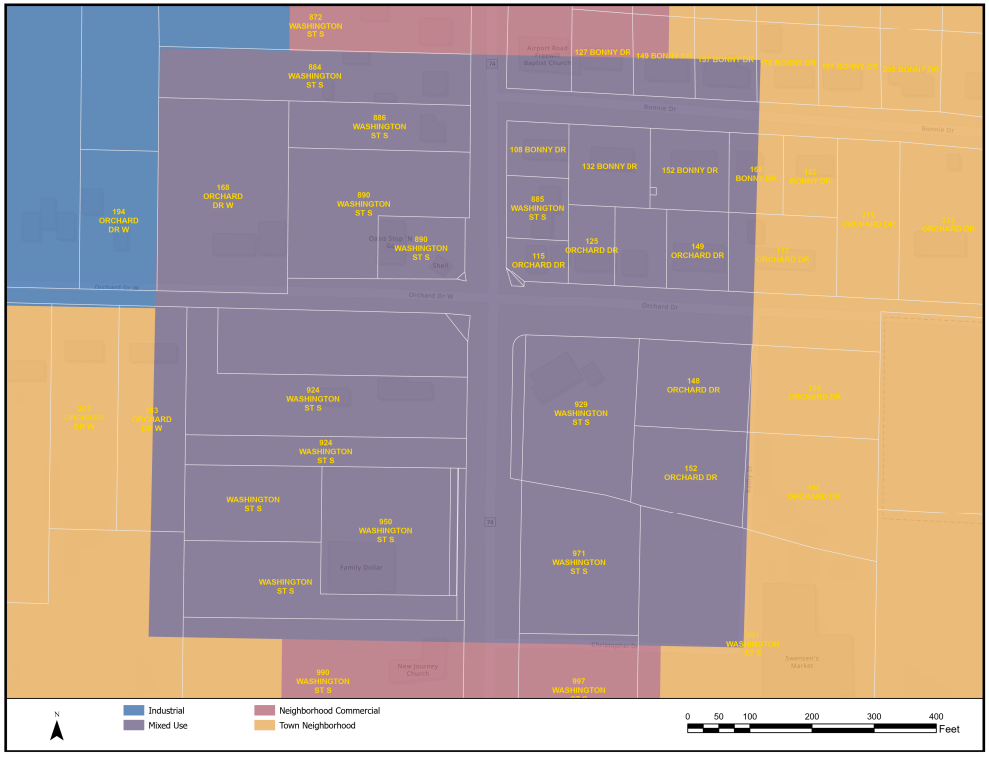
5. PZ24-0102 Applicant Narrative
6. PZ24-0102 December 3, 2024 PZC Minutes


Vicinity Map
Gulch Ln
Grandview Dr S
Orchard Dr W
Kenyon Rd
N 2800 E
Pheasant Rd W
Southwood Ave W
E 3600 N
Gardner Ave
Highland Ave
Lois St
Noble St
Park Ave
Hailee Ave
Washington St S
Harrison St S
Blue Lakes Blvd S
Locust St S
Madrona St S
N 2900 E
Valencia St
N 3000 E
Hillcrest Rd
Parcels
74
N
0
1,500
3,000
6,000 Feet
Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS

ZONING MAP



FUTURE LAND USE MAP



Zoning

Current Zoning:	R-4
Current Land Use:	Civic
Proposed Zoning:	C-1
Proposed Land Use:	Commercial

Surrounding Area

North:	Residential (R-2)
South:	C-1 PUD
East:	C-1 PUD
West:	C-1

Regulations

Twin Falls Municipal Code Sections 10-14

Future Land Use Category

Mixed Use: Serves local and regional commercial that is sited at intersections of major arterials. Typically this area is anchored by a grocery store, civic, or entertainment uses which allows high-intensity mixed use development in a compact, pedestrian oriented environment.

Land-Use Mix: Retail, Office, Restaurants, Civic, Vertical mixed use, Apartments, Hotels, etc.

Figure 1: Looking West

Figure 2: Looking South

Figure 3: Looking West

Figure 4: Looking North

Land Use Comparison Chart

Property Development Standards Comparison

R-4 Zoning District (current zone)	C-1, Commercial Zoning District (requested zone)
Allowed Uses: **Communications and utilities:** a. Underground and aboveground transmission lines. b. Utility owned buildings and structures less than twenty five (25) square feet in area and less than three feet (3') aboveground. **Parks:** a. Open space. b. Private parks and playgrounds without crowd attracting facilities. c. Public parks and playgrounds without crowd attracting facilities. **Residential:** a. Accessory buildings (less than 1,000 square feet), personal swimming pools and other accessory uses. b. Dwellings - attached single household dwellings on lots fronting on an arterial or collector street. c. Dwellings - detached single household. d. Dwellings - duplex.	Allowed Uses: **Communications and utilities:** a. Radio and television stations without transmission and receiving towers. b. Telegraph centers and telegraph stations. c. Telephone exchange stations. d. Underground and aboveground transmission lines. e. Utility owned buildings and structures less than twenty five (25) square feet in area and less than three feet (3') aboveground. **Cultural facilities:** a. Botanical gardens and arboretums. b. Historic sites and monuments. c. Libraries, museums and art galleries. d. Planetariums and aquariums. **Governmental facilities:** a. Fire stations and police stations. b. Governmental office buildings. c. Judicial facilities. **Manufacturing:** a. Business park ZDA only. **Medical Facilities:** a. Acupuncture facilities approved by the South Central district health department or other state regulatory agency. b. Ambulance service. c. Doctors' offices. d. Drug and alcohol treatment centers. e. Hospitals and clinics. f. Rehabilitation services. **Parks:** a. Open space. b. Park concessions. c. Private parks and playgrounds without crowd attracting facilities. d. Public parks and playgrounds without crowd attracting facilities. e. Public parks and playgrounds with crowd attracting facilities. **Public assembly:** a. Auditoriums. b. Funeral chapels. c. Religious facilities. d. Schools - private, single purpose.

	e. Schools - private, vocational and/or academic. f. Schools - public. g. Theaters - indoor. h. Wedding chapels and/or reception halls. **Residential:** a. Accessory buildings (less than 1,000 square feet), personal swimming pools and other accessory uses. b. Bed and breakfast facilities. c. Dwellings - multiple household (5 units or more). d. Home occupations. e. Household units existing at the time this title was adopted. f. Household units in the same building as an allowed use and occupied by the owner or an employee of the allowed use. g. Household units in upper floor of commercial or professional buildings. h. Nursing homes and rest homes. i. Residence halls, residence hotels, rooming houses. **Retail trade:** a. Alcoholic beverages when consumed on premises where sold and if located three hundred feet (300') or more from residential property. b. Apparel and accessories. c. Automobile parts store. d. Bakery. e. Bookstore. f. Commercial greenhouses. g. Craft shop, in conjunction with retail business. h. Eating places. i. Farm and garden supplies. j. Florist shop. k. Food, drugs, etc. l. General merchandise. m. Hardware store. n. Hobby and toy store. o. Home furnishings and equipment. p. Ice cream store. q. Import store. r. Laundering and dry cleaning. s. Laundromats. t. Lumber, plumbing and/or electrical supply stores. u. Music store. v. Pawnshop. w. Pet shop. x. Sporting goods store. y. Taxidermy studio. z. Temporary automobile, truck and recreational vehicle sales permitted with staff approval, provided that there shall be state approval, no parking or display of vehicles in landscaped areas, and no sight obstructions. **Services:** a. Advertising.

	b. Apparel repair and alteration. c. Beauty and barber shops. d. Building care contracting offices. e. Business associations. f. Civic, social and fraternal organizations. g. Construction trade offices. h. Consumer credit collection offices. i. Copy center - self-service. j. Daycare services. k. Dog grooming and/or kennels. l. Duplicating and stenographic offices. m. Employment agency. n. Finance and investment offices. o. Horticultural services. p. In home daycare services. q. Insurance and related business. r. Labor unions and organizations. s. Photography studios. t. Professional organizations. u. Professional services. v. Real estate and related business. w. Tourist information center. x. Welfare and charitable facilities. **Sports facilities:** a. Athletic areas. b. Miniature golf courses. c. Outdoor, public and commercial ice and roller skating facilities. d. Outdoor, public and commercial swimming pools. e. Outdoor, public and commercial tennis courts. **Transportation:** a. Bus facilities, including pick up shelters. b. Open parking lot or garage for automobiles. c. Taxicab office. d. Ticket and arrangement facilities.
Property Line Setbacks: (per building) Front Yard: 20' minimum from property line. Side Yard: 5' minimum to the side property line. Rear Yard: 20' minimum from property line.	Property Line Setbacks: Front: A setback of thirty-five feet (35') shall be maintained on major arterials Side & Rear: No property line setbacks are required on side yard or rear yards
Off Street Parking: Residential: 2 off street parking spaces per dwelling unit. Non Residential: Follow City Code 10-10	Off Street Parking: 4 spaces per 1000 sq. ft.
Building Height: No building shall exceed thirty-five feet (35') in height.	Building Height: No building shall exceed fifty feet (50') in height except as provided by section 10-7-3 of this title.

Written Statement of the Proposed Rezone of 929 Washington Street South

The City of Twin Falls would like to rezone the property located generally at 929 Washington Street South from Residential Medium Density (R-4) to Commercial Highway (C-1). The property is located on the intersection of two (2) arterials, Washington Street South and Orchard Drive. Because of this busy intersection the property is better suited for the C-1 district which is intended to provide for commercial activities of various sizes from large malls to small shops, fast food restaurants and tourist accommodations. This district is designed for application on major streets or portions thereof. Furthermore, the property is surrounded by the C-1 zoning district on the south, east, and west.

1. ***How the proposed zoning change relates to the Comprehensive Plan.***

The future land use map of the comprehensive plan calls out the area being a mixed-use area. The mixed-use designation describes this area as anchored by grocery store, civic, or entertainment uses that allows for high-intensity mixed use development in a compact, pedestrian oriented environment. The desired mix of land uses is retail, office, restaurants, civic, hotels, apartments, vertical mixed use, etc. All these uses align with the uses in which the C-1 zone allows by right or with a Special Use Permit.

2. ***Compatibility with the surrounding area.***

The area is surrounded by C-1 zoning. Immediately to the south and east is zoned C-1 with the Orchard Park Planned Unit Development. This development is housing the fire station, Swenson's Market, a Coffee shop, with other development in the works. Across the Washington St S, to the west, is undeveloped land that is zoned C-1 with a family dollar directly to the south of the vacant land. On the North East corner of Orchard and Washington St S is residential property zoned R-1. On the North West corner of the Orchard and Washington St S is C-1 zoned property that has an Oasis gas station.

3. ***Explanation of the intended use/development of the property.***

The intended or desired use of this property is follow the desired uses outlined in the Comprehensive Plan's future land use designation of Mixed-use as stated above in question 1. We believe this rezone request would allow for the flexibility to make that desire a reality.

Twin Falls Planning & Zoning Commission
Minutes

Tuesday, December 3, 2024, 6:00 PM

203 Main Ave East
Twin Falls, ID 83303

Members -
City Limits: Chairperson Danielle Titus; Vice-Chair Cortney Campbell; Todd Rambur; Robyn Weatherford; Kelly Herrgesell; Tiffany Zimmerman
Area of Impact:

1) **Confirmation of Quorum/Call Meeting to Order**
Chairperson Titus called the meeting to order at 06:00 PM
Members Attending: Titus, Campbell, Rambur, Weatherford, Zimmerman
Staff Attending: Spendlove, Klaver, Ebersole, Green, Vitek

2) **Conflict of Interest Declaration**

3) **Consent Calendar**

a) Approval of minutes from the following meeting: November 19, 2024
Vice-Chair Campbell made a motion to approve the consent calendar, as presented. Commissioner Rambur seconded the motion.

4) **Items of Consideration**

5) **Public Hearings**

a) Request a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)

Staff Presentation:
Senior Planner Klaver presented the request for a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102)
Zoning districts, zoning subdistricts and overlay districts shall be amended in the following manner:

A. Requests for an amendment to this title shall be submitted to the commission which shall evaluate the request to determine the extent and nature of the amendment requested;
B. If the request is in accordance with a comprehensive plan, the commission may recommend and the council may adopt or reject the ordinance amendment under the notice and hearing procedures as herein provided; and
C. If the request is not in accordance with a comprehensive plan, the request shall be submitted to the commission or, in its absence, the council which shall recommend and the council may adopt or reject an amendment to a

comprehensive plan under the notice and hearing procedures provided in section 10-7-20 of this title.

Zoning Map Amendment: The commission, prior to recommending a zoning map amendment that is in accordance with a comprehensive plan to the council, shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. Notice for public hearings shall be provided as set forth in section 10-7-20 of this title.
In 1988, the Fire Station received approval for a sign and records show the zoning being the current zoning designation of R-4. In 2005, the Fire Station was expanded to accommodate two brush trucks by building a 2,000 Square Foot garage.

The subject property was the old Fire Station #3, which has stopped being used since the new Fire Station #3 was finished in February 2024.
The City of Twin Falls would like to rezone the property located generally at 929 Washington Street South from Residential Medium Density (R-4) to Commercial Highway (C-1). The property is located on the intersection of two (2) arterials, Washington Street South and Orchard Drive. The busy intersection makes this property better suited for the C-1 district, which is intended to provide for commercial activities of various sizes from large malls to small shops, fast food restaurants and tourist accommodations. This district is designed for application on major streets or portions thereof. Furthermore, the property is surrounded by the C-1 zoning district on the south, east, and west.

How the proposed zoning change relates to the Comprehensive Plan.

- The future land use map of the comprehensive plan calls out the area being a mixed-use area. The mixed-use designation describes this area as anchored by grocery store, civic, or entertainment uses that allows for high-intensity mixed use development in a compact, pedestrian oriented environment. The desired mix of land uses is retail, office, restaurants, civic, hotels, apartments, vertical mixed use, etc. All these uses align with the uses in which the C-1 zone allows by right or with a Special Use Permit.

Compatibility with the surrounding area.

- The area is surrounded by C-1 zoning. Immediately to the south and east is zoned C-1 with the Orchard Park Planned Unit Development. This development is housing the fire station, Swenson's Market, a Coffee shop, with other development in the works. Across the Washington St S, to the west, is undeveloped land that is zoned C-1 with a family dollar directly to the south of the vacant land. On the North East corner of Orchard and Washington St S is residential property zoned R-1. On the North West corner of the Orchard and Washington St S is C-1 zoned property that has an Oasis gas station.

Explanation of the intended use/development of the property.

- The intended or desired use of this property is follow the desired uses outlined in the Comprehensive Plan's future land use designation of Mixed-use as stated above in question 1. We believe this rezone request would allow for the

flexibility to make that desire a reality.

Upon conclusion, the commission is tasked with making a recommendation to the City Council on the zoning designation being requested.

The commission may recommend the proposed zone change from R-2 to C-1, recommend the R-2 zoning be maintained, recommend an alternative zoning designation, or table the request to acquire additional information.

PZ/Questions & Comments:

- Commissioner Rambur asked if there were any specific plans.
- Senior Planner Klaver replied that there are none but the zone change would be beneficial in the future.
- Commissioner Rambur asked if the city is planning on keeping or selling the property.
- Senior Planner Klaver stated they plan on selling.
- Chairperson Titus asked about the R-4 zone and how the fire station was permitted.
- Senior Planner Klaver answered that a Special Use Permit was given.

Public Hearing: Opened and closed with no public input.

Discussions Followed:

Commission feels this will be a good fit with the surrounding.

MOTION: Vice-Chair Campbell moved to approve the request for a recommendation to City Council for a Zoning District Change from R-4 to C-1 on property located at 929 Washington Street South. c/o City of Twin Falls (PZ24-0102). Commissioner Weatherford seconded the motion. Roll call vote showed all members present voted.

Approved 5 to 0.

b) Request a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).

Staff Presentation:
Senior Planner Klaver presented the request for a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114).
Per City Code 10-6-1.7 (B) The applicant is required to present a preliminary review prior to a public hearing to the Planning and Zoning Commission in which the Commission may give suggestions and ask questions of the applicant about the proposed ZDA.

Per City Code 10-6-1.7(E) Approval of a ZDA shall be based on the following

standards: the proposed uses are not detrimental to surrounding properties; deviations from Title 10 shall be warranted by the design of the conceptual plan; conformance to the Comprehensive Plan, and existing and/or proposed infrastructure must be adequate for the project.

Per City Code 10-14-1 thru 8 Any application for a zoning district change shall follow the procedures outlined in these sections.
In 2005, Campus Park PUD was created and established the land use and zoning entitlements.
The proposed amendment is to increase the building coverage of the sight by allowing for another building consisting approximately 8,000 SF. Per 10-6-1.6, increasing the building coverage of the sight from the approved Conceptual Development Plan requires a recommendation from the Planning and Zoning Commission to the City Council. The Council makes the decision.

The applicant is not requesting to increase the density, building height, reduction in off-street parking ratio, reducing setbacks, reduction in open space, or the design theme. This approval grants the right for the developer to apply for a building permit for a new residential building, while keeping all regulations (i.e. parking ratio, height, density, etc.) the same.

The City of Twin Falls Comprehensive Plan calls for Commercial and Town Neighborhood type uses. Commercial uses denoted in the Comprehensive Plan are Highway-oriented, large-format retail, hotels, restaurants, and other retail. Town Neighborhood uses denoted in the Comprehensive Plan are primarily residential, such as single family, triplex, schools, etc. City Staff believe this amendment would be in line with the City's Comprehensive Plan.

Staff does not see detrimental impacts with the request, and would recommend approval.
Upon conclusion, the commission is tasked with making a recommendation to the City Council on the zoning designation being requested by the applicant.

The commission may recommend the approval as presented, recommend approval with conditions, recommend denial, or table the request to acquire new information. Should the commission recommend approval of the request, Staff recommends the following condition:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

PZ/Questions & Comments:

- Vice-Chair Campbell asked about parking.
- Senior Planner Klaver stated it still meets standards and is included when obtaining the building permit.

Public Hearing: Opened and closed with no public input

Discussions Followed:

Commission feels this will work in the property.

MOTION: Commissioner Rambur moved to approve the request for a recommendation to City Council for a Zoning Development Agreement Amendment to allow an additional building on property located at 132 Falls Avenue West. c/o Jared Nielson on behalf of Falls Crossing (PZ24-0114). Vice-Chair Campbell seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

c) Request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120).

Staff Presentation:
Planner Ebersole presented the request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120).
Per City Code 10-13-2-2, the Special Use Permit process requires a public hearing in which interested persons have the opportunity to be heard, with regards to the application.

The Commission shall decide on the request within thirty (30) days after the public hearing. If Conditions of Approval are placed on the permit by the Commission, the Administrator shall issue the permit specifically listing such conditions. Conditions shall be implemented within 6 months, or the permit is void.

If the Commission's decision is appealed within fifteen (15) days of the signing of the Findings of Fact, City Council shall set a hearing date to consider all information, testimony, and minutes of the previous hearing to reach a decision on the appeal.

Standards Applicable to Special Uses:

- Will, in fact, constitute a special use as established by zoning requirements for the zone involved.
- Will be harmonious with and in accordance with the general objectives or with any specific objective of a comprehensive plan and/or zoning regulations.
- Will be designed, constructed, operated, and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area.
- Will not be hazardous or disturbing to existing or future neighboring uses.
- Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer and schools; or that the persons responsible for the

establishment of the proposed use shall be able to provide adequately any such services.

- Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any person, property or to the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
- Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
- Will not result in the destruction, loss or damage of a natural, scenic or historic feature of major importance.

Per City Code 10-4-8.2 states a special use permit is required for “any facility with drive-through service” and “permitted retail/trade uses operating outside the hours of seven o’clock (7:00) A.M. to ten o’clock (10:00) P.M.”

10-13-2-2: Upon Granting a Special Use Permit, Conditions May Be Attached To A Special Use Permit Including, But Not Limited To, Those:

1. Minimizing adverse impact on other developments.
2. Controlling the sequence and timing of development.
3. Controlling the duration of development.
4. Assuring that development is maintained properly.
5. Designating the exact location and nature of development.
6. Requiring the provision for on-site or off-site public facilities or services.
7. Requiring more restrictive standards than those generally required in this Title.

The property is zoned C-1 PUD, located within the Canyon Park West No. 1 PUD. The property was home to Golden Corral until mid-2024, and the building is now vacant. The applicant's narrative states the proposed hours of operation are seven (7) days per week, 9:30 A.M. – 1:30 A.M., Sunday – Thursday and 9:30 A.M. – 3:30 A.M., Friday and Saturday. The hours of operation fall outside the allowed retail hours of 7:00 A.M. – 10:00 P.M. and require a Special Use Permit.

The restaurant will be staffed with an average of twelve (12) associates per shift.

The parking requirements for this request are calculated by building size. A building of 3,118 square feet plus 1,209 square foot outdoor seating area requires 43 total parking spaces, per City Code. The Canyon Park West No. 1 PUD has a cross-use parking agreement that allows the center’s parking to be used by all tenants. On the site plan, the applicant has shown the parking for the restaurant at forty-eight (48) spaces, including ADA spaces, exceeding the requirement.

The restaurant will have two (2) drive-through lanes for order taking and food service. Per city code, drive-through lanes have a vehicle stacking requirement of five (5) cars per lane from the first window, pickup window, order board, or other stopping point. The proposed site plan shows the queue in three (3) different phases, depending on the

number of vehicles waiting in the drive-through lanes.

With the grand opening and other busier times of the shopping and tourist seasons, this queue may become overcrowded with vehicles. The applicant has addressed this concern in their narrative by having store associates available to manage the excess vehicle traffic. Staff is deployed with handheld tablets to take multiple orders, moving the vehicles through the drive-through lanes efficiently.

Per the ITE Trip Generation Manual, a fast-food restaurant with a drive-through window will generate 50.94 vehicle trips per PM peak hour (4:00 – 6:00 pm) per 1,000 Sq. Ft. GFA (gross floor area), with a directional distribution of 51% entering, 49% exiting. Based on this statistic, a restaurant of approximately 3,118 sq. ft. can expect up to 154 total vehicle trips per PM peak hour. That calculates out to roughly seventy-nine (79) vehicles entering and seventy-five (75) vehicles exiting per PM peak hour.

A “buzz” may be created with the restaurants' grand opening and extra traffic may be generated to this location. Staff have discussed traffic concerns with the applicant and have added a condition that the restaurant traffic cannot impact the local public roads. Should the traffic become a condition, they would be in violation of the Special Use Permit and would have to figure out a new traffic management solution or the permit would be revoked. Fillmore Street is a private road, while Canyon Springs Road is public. Raising Cane’s and Wood Investment Group will oversee the traffic management through the shopping center and to and from the restaurant. The narrative speaks to their traffic management plan, with staff and possible off-duty police officers directing traffic through the site.

This request is not the first drive-through request that has come before the commission in this area. There are currently multiple drive-through businesses in the surrounding area, which are all responsible for managing their drive-through queues. Swig has a drive-through in the same shopping center as this proposed location. In N Out Burgers was approved for a drive-through in October. The Habit is also located in the same shopping center and has a working drive-through. Across the street, at the Magic Valley Mall, there are two drive-through restaurants (Starbucks and Taco Bell), plus many more along Blue Lakes Blvd. and Pole Line Rd.

The 2016 Comprehensive Plan; “Grow With Us” designates this area as appropriate for “Mixed Use” serving local and regional commercial businesses, which allows for high-density mixed use development in a compact, pedestrian-oriented environment, sitting at intersections of major arterials. Staff has determined the proposed use is compatible with the comprehensive plan and the area, as it is a high-density commercial center with other retail stores and restaurants serving the community at large.

Based on the standards for approval, Staff does not foresee detrimental impacts related to the land use, although traffic congestion may be an issue with the grand opening of a new, highly anticipated business coming to town.
Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

Upon conclusion should the Commission recommend approval of the request, as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.
2. Subject to the traffic flow for the drive-thru does not impact the local public roads.

PZ/Questions & Comments:

- Commissioner Zimmerman asked what the hours were for In-N-Out.
- Planner Ebersole answered they are approved until 1:30 am.

Applicant Presentation:
Michael O'Reilly presented on behalf of the applicant. The site plan shows a right-in right-out set up for traffic to prevent backup. If needed, they will hire off-duty police officers to help facilitate traffic. They have 3 phases of operation as needed.

PZ/Questions & Comments:

- Commissioner Zimmerman asked if customers come off Fillmore how will they enter.
- Michael O'Reilly explained on screen the different options. They are flexible with hours and will close if not busy.
- Chairperson Titus asked for clarification about the extended hours and if they are asking for both drive-thru and lobby, and would close the lobby if slow.
- Michael O'Reilly replied yes.
- Chairperson Titus asked staff if the city has anyone else with 2 lanes. How will applicant deliver food to the second lane.
- Michael O'Reilly answered that the food is hand delivered to cars.
- Commissioner Weatherford asked about the phase 3 vehicle plan and who is facilitating the movement.
- Michael O'Reilly explained the employees or police.

Public Hearing: Opened and closed with no public input.

- Director Spendlove clarified the 154 was incoming traffic, city does not have city police that would work there. The applicant would have to hire independently.
- Chairperson Titus asked to clarify the intention of the escape lane.
- Director Spendlove stated after chick-fil-a had an emergency, an escape lane was needed.
- Chairperson Titus asked the applicant to clarify about employee walking food to the second lane.
- Michael O'Reilly replied that there is no curb just striping.

Discussions Followed:

- Vice-Chair Campbell had concern with hours until 3 but others have the same.

- Commissioner Weatherford stated the city has some 24 hour restaurants and this will be a great addition.
- Chairperson Titus feels this is a good use of the property and there were no public comments.
- Commissioner Zimmerman feels with no public comment this shouldn't be an issue.

MOTION: Commissioner Weatherford moved to approve the request for a Special Use Permit to allow drive-thru services and extended hours of operation on property located at 1823 Blue Lakes Blvd N. c/o Michael O'Reilly on behalf of LuAron Foster (PZ24-0120). Commissioner Zimmerman seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

d) Request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123).

Staff Presentation:
Planner Ebersole presented the request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123).
The additional height process requires a public hearing to be held in which interested persons have the opportunity to be heard in regard to the application. After the public hearing, the Commission shall make a recommendation to the City Council in the form of approval, conditional approval, or disapproval of the application as presented during the hearing.

Per City Code 10-4-10(C) states “No building shall exceed fifty feet (50’) in height except as provided by Section 10-7-3”.

Per City Code 10-7-3 The council may allow greater than standard building heights with or without extra setback requirements, in the CB, C1, OT, M1 and M2 zoning districts and subdistricts. A request for additional height shall follow the public hearing process for zoning map amendments as described in subsection 10-4-5(B) and 10-14-7 of this title.

After receiving the recommendation from the Commission, the City Council shall hold a public hearing. After the public hearing, the Council may approve, conditionally approve, or disapprove the application as presented.
In February 2011, a non-conforming expansion permit was issued to Glanbia Foods for an expansion of their operations at this location.

In December 2014, the city council approved additional building height for two other silos on the subject property.

In August 2021, the city council approved additional building height for an additional silo on the subject property.
The applicant wants to add additional 50,000 gallon raw milk silos for milk segregation,

to better serve their needs at the facility on the subject property. The silos will be a maximum of 75 feet tall. The first silo is expected to be the same height as Silo #8.

The addition of the silos will not have detrimental impacts on surrounding properties, due to traffic, noise, glare, odor, or fumes and/or vibrations. There is no need for additional employees, and no change to the hours of operation.

The location of the silo is considerably set back from the current roadway, and from any nearby residential properties.

Approval of this zoning request does not preclude the applicant from obtaining the required permits and/or licenses needed to complete the project.

Upon conclusion, should the Commission recommend approval to City Council of the request as presented, staff recommends the following:

1. Subject to site plan amendments as required by Building, Engineering, Fire and Zoning Officials to comply with applicable City Codes and standards.

PZ/Questions & Comments:

- Chairperson Titus asked where the new one is going.
- Planner Ebersole showed on screen they are in the back of the current ones.

Applicant Presentation:
Kim Jasper presented on behalf of the applicant. They are asking for 2 additional feet for the pads.

PZ/Questions & Comments:

- Chairperson Titus asked for clarification if they are asking for 2 new silos.
- Kim Jasper replied yes.

Public Hearing: Opened and closed with no public input

Discussions Followed:

Commission feels that with the city approving the same heights for other silos, this should not be an issue.

MOTION: Vice-Chair Campbell moved to approve the request for a recommendation to City Council to allow Additional Building Height for new silos, up to 75 feet, on property located at 236 Washington Street South. c/o Kim Jasper on behalf of Glanbia Nutritionals (PZ24-0123). Commissioner Weatherford seconded the motion. Roll call vote showed all members present voted.
Approved 5 to 0.

6) Upcoming Meeting(s)

a) December 17, 2024

7) Adjournment
The meeting adjourned at 06:58 PM

Jody Green

Jody Green, Planning Technician