Twin Falls City Council
Agenda

Monday, March 3, 2025, 4:30 PM

Special Meeting
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) Executive Session

   a) **ACTION ITEM:** Request to convene to Executive Session pursuant to Idaho Code § 74- 206(1)(E) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states ornations

      By: Travis Rothweiler, City Manager

3) Pledge of Allegiance

4) Consent Calendar

   a) **ACTION ITEM:** Request to approve City Council 2025 February 24, Minutes.
      By: Rachael Long, Administrative Assistant

   b) **ACTION ITEM:** Request to approve Accounts Payable for February 20-26, 2025.
      By: Amy Luna, Deputy City Clerk

   c) **ACTION ITEM:** Request City Council to approve the Special Event Permit for the organizers of the Twin Falls Municipal Band Concerts.
      By: Lou Coronado, Sergeant, Twin Falls Police Department

   d) **ACTION ITEM:** Request City Council to approve the Special Event Permit for the organizers of the Canyon Rim Spring Classic event.
      By: Lou Coronado, Sergeant, Twin Falls Police Department

   e) **ACTION ITEM:** Request City Council to approve the Special Event Permit for the organizers of the Twin Falls Pride Festival.
      By: Lou Coronado, Sergeant, Twin Falls Police Department

   f) **ACTION ITEM:** Request to approve the Findings of Facts and Conclusions of Law for the following:
      PZ25-0018 Final Plat for Gemini Business Park By:
      William Klaver, Senior City Planner

5) Items of Consideration

   a) **ACTION ITEM:** To confirm the appointment of Jeff Bulkley to the Planning and Zoning Commission, as the Area of Impact representative.

      By: Jonathan Spendlove, P&Z Director

   b) **ACTION ITEM:** Request that the Council approve using wastewater reserve funds, not exceeding $50,000, to purchase Smart Cover sensors to monitor flow levels in the citysewer system.

      By: Nathan Erickson, Environmental Manager

   c) **ACTION ITEM:** A request to approve an exchange agreement between the city and the Twin Falls School District regarding the City Pool and the Sawtooth Softball Fields.

      By: Mitch Humble, Deputy City Manager

   d) **ACTION ITEM:** A request to approve a contract with Starr Corporation to serve as the City's construction manager/general contractor (CM/GC) for the remodel of the former Council Chambers and the Police Administration building.

      By: Mitch Humble, Deputy City Manager

6) General Public Input

7) <u>Advisory Board Report/Announcements</u>

8) <u>Adjournment</u>

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 Desae Esta information in Español, Por favor llama a Josh Palmer al telephone (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, February 24, 2025, 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.

Absent:

Staff Present: City Manager Travis Rothweiler, Deputy City Managers Mitch Humble & Gretchen Scott, City Attorney Bruce Castleton, Administrative Assistant Rachael Long, Public Information Coordinator Joshua Palmer, Public Works Director Josh Baird, Assistant Public Works Director Erin Steel, Wastewater Superintendent Doug Gonzalez, Airport Director Bill Carberry, Engineer Jesse Schuerman, City Engineer Troy Vitek, Assistant Public Works Director Erin Steel, Street Superintendent Mark Thomson,

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 Stone moved to remove Item G from the consent calendar. **Council Member Reid** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.
MOTION: Council Member Reid moved to approve the Consent Calendar as presented for items A-F. **Vice Mayor Brown** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.
MOTION: Council Member Reid moved to approve the Consent Calendar item G, as presented. **Council Member Hawkins** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0.

a) Request to approve City Council 2025 February 18, Minutes.
b) Request to approve Accounts Payable for February 13-9, 2025.
c) Request City Council to approve the Special Event Permit for the organizers of the 2025 Summer Solstice Youth Trio
d) Request the City Council approve the Special Event Permit for the organizers of the Easter Egg Hunt - Optimist event.
e) Request the City Council to approve the Special Event Permit for the organizers of Movies in the Park.
f) Request to approve an FAA antenna site airport ground lease renewal with L3 Harris and authorize the mayor to sign the agreement.
g) Request for approval of a Final Plat for Gemini Business Park consisting of 6 lots on 78.25 (+/-) acres on property located at 3270 W 3700 N. c/o Tyler Davis-Jeffers (PZ25-0018).

4) Items of Consideration

a) A presentation to recognize Water and Wastewater Collection Operator Licenses.
Mayor Pierce thanked Josh Baird and Doug Gonzalez for their presentation.

b) Request to approve acceptance of a $15,000 ITD Aeronautics airport grant offer.
Airport Manager Bill Carberry request to approve acceptance of a $15,000 ITD Aeronautics airport grant offer.

Discussion ensued on the following:
Council Member Reid thanked Bill for all his hard work.

MOTION: Council Member Reid moved to approve the request to approve acceptance of a $15,000 ITD Aeronautics airport grant offer. **Council Member Stone** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

c) Request to approve City Resolution # R-2025-001, authorizing the mayor to sign the resolution and grant offer.
Airport Manager Bill Carberry requested to approve City Resolution # R-2025-001, authorizing the mayor to sign the resolution and grant offer.

Discussion ensued on the following: None

MOTION: Council Member Hawkins moved to approve the request to approve City Resolution # R-2025-001, authorizing the mayor to sign the resolution and grant offer**. Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

d) Request to award Eastland Drive Road reconstruction project to Extreme Excavation for a total project value of $9.066 million.

Engineer Jesse Schuerman requested to award Eastland Drive Road reconstruction project to Extreme Excavation for a total project value of $9.066 million.

Discussion ensued on the following:
Council Member Stone asked if the 10% contingency is enough?
Council Member Reid asked if we have a timeline to be completed?

MOTION: Vice Mayor Brown moved to approve the request to award Eastland Drive Road reconstruction project to Extreme Excavation for a total project value of $9.066 million**. Council Member Stone** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

e) Shoshone Falls Grade Project Update and authorize the Engineering Department to negotiate with the contractor for incentives to finish access to the Shoshone Falls for the public earlier than contracted.

City Engineer Troy Vitek gave the Shoshone Falls Grade Project Update, and requested to authorize the Engineering Department to negotiate with the contractor for incentives to finish access to the Shoshone Falls for the public earlier than contracted.

Discussion ensued on the following:
Council Member Cutler spoke in favor of using the funds so that we will be able to recoup the amount back.
Mayor Pierce asked how much was in the contingency fund?
Council Member Vollmer asked how the contractor felt about getting the date done earlier.
Council Member Reid spoke in favor of this to be able to get it open in time for tourism.

MOTION: Council Member Hawkins moved to approve the request to authorize the Engineering Department to negotiate with the contractor for incentives to finish access to the Shoshone Falls for the public earlier than contracted. **Council Member Reid** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

f) A request to approve the reallocation of $62,178.69 of remaining SLFRF funds from the Fleet remodel project and $5,546.59 from Street Sidewalk Construction to complete landscape and sidewalk improvement.

Deputy City Manager Scott requested to approve the reallocation of $62,178.69 of remaining SLFRF funds from the Fleet remodel project and $5,546.59 from Street Sidewalk Construction to complete landscape and sidewalk improvements.

Discussion ensued on the following: None

MOTION: Vice Mayor Brown moved to approve the request for the reallocation of $62,178.69 of remaining SLFRF funds from the Fleet remodel project and $5,546.59 from Street Sidewalk Construction to complete landscape and sidewalk improvements. **Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

g) A request to authorize the use of $150,000 from the Streetlight Reserve Fund for the installation of additional subdivision lighting.

Deputy City Manager Mitch Humble requested to authorize the use of $150,000 from the Streetlight Reserve Fund for the installation of additional subdivision lighting.

Discussion ensued on the following:
Council Member Reid asked how much we have in the fund.
Council Member Stone asked how long it would take once the permit was requested.

MOTION: Council Member Vollmer moved to approve the request to authorize the use of $150,000 from the Streetlight Reserve Fund for the installation of additional subdivision lighting**. Council Member Reid** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 7 to 0.

h) A request to approve the Third Addendum to the Frontier Park Joint Use and Development Agreement between the City and the College of Southern Idaho regarding a 45-year extension to the term of that agreement.

Deputy City Manager Mitch Humble requested to approve the Third Addendum to the Frontier Park Joint Use and Development Agreement between the City and the College of Southern Idaho regarding a 45-year extension to the term of that agreement.

Discussion ensued on the following: None

MOTION: Vice Mayor Brown moved to approve the request to approve the Third Addendum to the Frontier Park Joint Use and Development Agreement between the City and the College of Southern Idaho regarding a 45-year extension to the term of that agreement**. Council Member Vollmer** seconded the motion. The roll call vote showed all members present voted in favor of the motion, 6 to 0**.**

5) General Public Input

6) Advisory Board Report/Announcements

Craig Hawkins thanked the city for the Veterans fair, the outcome was a great turnout.

7) Adjournment

The meeting adjourned at 5:48PM

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Rachael Long, Administrative Assistant

**If you wish to have a full account of this meeting, please listen to the recording that is located on our website. ** Tfid.org

BEFORE THE CITY COUNCIL
OF THE CITY OF TWIN FALLS

In Re:	)	
	)	
Final Plat Application,	)	FINDINGS OF FACT,
	)	
Gemini Business Park Applicant(s).	)	CONCLUSIONS OF LAW,
	)	
	)	AND DECISION

This matter having come before the City Council of the City of Twin Falls, Idaho on February 24, 2025, for consideration of the final plat of the Gemini Business Park, approximately 78.25 (+/-) acres located at 3270 W 3700 N, and the City Council having heard testimony from interested parties, having received written Findings from the Planning and Zoning Commission and being fully advised in the matter, now makes the following

FINDINGS OF FACT

1. Applicant has requested approval of the final plat of the Gemini Business Park, approximately 78.25 (+/-) acres located at 3270 W 3700 N.

2. The property in question is zoned M-2 pursuant to the Zoning Ordinance of the City of Twin Falls. The property is designated as Industrial/Flex/Employment in the duly adopted Comprehensive Plan of the City of Twin Falls.

3. The existing neighboring land uses in the immediate area of this property are: to the north, Industrial Park; to the south, Industrial;; to the east, Agriculture; to the west, Undeveloped.

4. The City Engineering Office has reviewed the final plat and has approved the proposed street accesses and public utility extensions, subject to availability of such services at the time of development. The developer will pay all costs of public improvements, including but not limited to streets, curb gutter and sidewalks, sewer, water and pressurized irrigation systems. The proposed development includes dedication of additional right-of-way in compliance with the Master Street Plan.

Based on the foregoing Findings of Fact and the regulations and standards set forth below, the City Council hereby makes the following

CONCLUSIONS OF LAW

1. The final plat of the Gemini Business Park, approximately 78.25 (+/-) acres located at 3270 W 3700 N is in conformance with the objectives of the zoning ordinance and the policy for developments in Twin Falls City Code §10-1-4. Specifically, the land can be used safely for building purposes without danger to health or peril from fire, flood or other menace, proper provision has been made for drainage, water sewerage and capital improvements including schools, parks, recreation facilities, transportation facilities and improvements, all existing and proposed public improvements conform to the Comprehensive Plan.

2. The final plat is in conformance with the Comprehensive Plan as required by Twin Falls City Code §10-12-2.3(H)(2)(a).

3. Public services are currently available to accommodate the proposed development, as required by Twin Falls City Code §10-12-2.3(H) (2) (b). Public services may not be available at the time of development, depending upon the speed of development of this and other subdivisions and the ability of the City to obtain additional water and/or sewer capacity.

4. The development of streets, sewer, water, irrigation, dedication of park land and other public improvements at the cost of the developer will not adversely affect any capital improvement plan and will integrate with existing public facilities, as required by Twin Falls City Code §10-12-2.3(H)(2)(c).

5. There is sufficient public financial capability of supporting services for the proposed development, as required by Twin Falls City Code §10-12-2.3(H)(2)(d).

6. There are no other health, safety or environmental problems associated with the proposed development that were brought to the City Council's attention, per Twin Falls City Code §10-12- 2.3(H)(2)(e).

7. The final plat is in conformance with the Preliminary Plat. Based on the foregoing Conclusions of Law, the Twin Falls City Council hereby enters the following

DECISION

The request for approval of the final plat of the Gemini Business Park, approximately 78.25 (+/-) acres located at 3270 W 3700 N is hereby granted, subject to final technical review by the City Engineer's Office and subject to the conditions which are attached as "Exhibit No. A" and incorporated by reference as though fully set forth herein. The applicant shall comply with all applicable requirements of the Adopted Standard Drawings, the Zoning Ordinance, and the City Code of the City of Twin Falls.

MAYOR - TWIN FALLS CITY COUNCIL

DATE

“EXHIBIT NO. A”

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 submittal of a final plat, submitted prior to the signing of the final plat, showing compliance with all conditions and comments in Engineering Memorandum dated February 3, 2025; and
3. Subject to submittal of final plat, submitted prior to the signing of the final plat, showing lot sizes.

Date: Monday, March 3, 2025

To: Honorable Mayor and City Council

From: Jonathan Spendlove, P&Z Director

ACTION ITEM

Request:

To confirm the appointment of Jeff Bulkley to the Planning and Zoning Commission, as the Area of Impact representative.

Time Estimate:

Approximately five (5) minutes.

Background:

The Area of Impact appointment recently tendered their resignation due to a change in scheduled availability. They had fulfilled one year of their first term.

We published a request for volunteers during the month of December and January, receiving a handful of applicants. Mayor Ruth Pierce, PZ Commission Vice Chair Cortney Campbell, and PZ Director Jonathan Spendlove reviewed the applications and conducted interviews.

The interview panel found Jeff to be an engaging and passionate member of the community, and would be an excellent choice to fill the vacant position. His background is in small-business entrepreneurship, the most recent being United Distributors, an automated pivot irrigation company. His interests in civic engagement and history in small business operations will bring a balanced perspective to the Planning Commission.

Approval Process:

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

Budget Impact:

Regulatory Impact:

Approval of this request will fill the vacant Planning and Zoning Commission seat.

History:

Analysis:

Conclusion:

The Council is tasked with making a decision on the Mayoral appointment of Jeff Bulkley to the Planning and Zoning Commission to finish a partial 3 year term.

Attachments:

None

Date: Monday, March 3, 2025

To: Honorable Mayor and City Council

From: Nathan Erickson, Environmental Manager

ACTION ITEM

Request:

Request that the Council approve using wastewater reserve funds, not exceeding $50,000, to purchase Smart Cover sensors to monitor flow levels in the city sewer system.

Time Estimate:

Staff estimates 5-10 minutes to explain history and request.

Background:

Like many sewer systems across the United States, the City of Twin Falls experiences **Inflow and Infiltration (I&I)** due to unwanted entry of surface water and groundwater into the sewer system. The sudden water inflow from precipitation can sometimes overwhelm the sewer system and lead to **Sanitary Sewer Overflows (SSOs)**. It is believed that one SSO the city experienced in August 2023 was due to a precipitation induced I&I event combined with root intrusions into the sewer line. More recently, the city has identified an increase in I&I that is likely tied to a single location that is allowing I&I to enter the sewer. With the current tools available, mainly video inspections of sewer lines, city staff have been unsuccessful in identifying the source of the I&I.

City staff have found a company specializing in using ultrasonic meters and pressure transducers to help monitor sewer flow levels via satellites and an online website. The company is Smart Cover, and the information about its sensors can be seen in the attached Smart Cover info sheet. Over the last several years, other cities in Idaho have utilized it as a tool to help monitor and address concerns in their sewer systems, including Nampa, Boise, and Coeur d'Alene. After talking with these cities and receiving positive feedback, city staff feel that using Smart Cover flow level monitoring equipment would be a beneficial addition to help address many sewer issues and improve the efficiency of the sewer system and city staff time.

City staff propose purchasing eight units, as shown in the attached Smart Cover quote. It is believed that eight sensors will provide the city with good coverage and the ability to move them around as needed. It is important to note that the continued use of these sensors will require an annual satellite plan and maintenance warranty estimated at $1,000 per year per sensor. The continued use of these sensors would be included in the Wastewater Collection's yearly operation and maintenance budget. The benefits seen by other cities can be seen in the attached Case Studies.

Initially, the Smart Cover sensors will monitor sewer flow and help zero in on sources of I&I throughout the system. Additional opportunities to utilize the sensors are:

- Prevent SSOs due to Fats, Oil, and Grease (FOG) or other blockages in the sewer system by placing the sensors at locations where an early alarm would help staff address the blockage before the SSO occurs.
- Currently, the city spends significant staff time and equipment on regular preventative sewer line jetting. Other cities have found that Smart Cover sensors helped them move from a calendar or

preventative schedule to a prescriptive or as-needed cleaning program due to the information provided by Smart Cover sensors. This would reduce the time staff spend jetting and, in some cases, the sewer line deterioration due to frequent jetting.

- Backup alarm for lift stations as needed.
- Measure and track the effectiveness of the stormwater system.
- There is also an option to switch out the level sensor with an H2S sensor that would provide real-time H2S data.

Approval Process:

Majority approval by the City Council will authorize City Staff to use wastewater reserve funds to purchase Smart Cover flow sensors.

Budget Impact:

Sufficient funds are available in the wastewater reserves to expend the unbudgeted amount of $50,000.

Regulatory Impact:

By purchasing Smart Cover sensors, the city can prevent SSOs and better “operate, maintain, and improve its systems to meet federal, state, and local standards” (Strategic Plan Objectives EC2.3.4).

History:

N/A

Analysis:

N/A

Conclusion:

The purchase of Smart Cover sensors represents a proactive and cost-effective solution to address the City of Twin Falls' I&I challenges. By investing in these eight units, the city will gain the real-time data necessary to pinpoint I&I sources, prevent SSOs, optimize maintenance schedules, and improve overall sewer system efficiency, ultimately safeguarding public health and minimizing operational costs.

Attachments:

1. Smart Cover Info Sheet
2. Smart Cover Quote
3. Case Studies

SMARTCOVER®
WE'VE GOT IT COVERED™

SmartLevel™
Sewer Level Monitoring

SmartLevel™ is the used for measuring and reporting sewer levels. SmartLevel provides collection systems with unmanned operations monitoring real time sewer levels 24/7/365. Any subtle nuances in level data are analyzed and when irregularities or anomalies are detected, the system sends notifications for situational assessment. Combined with the SmartTrend analysis tool, the system is able to indicate when and where there may be a potential pipe blockage due to debris, fats, roots. oil or grease causing levels to rise.

Our Subsonic® sensor measures from the bottom of the invert to the manhole cover using both ultrasonic and pressure readings, ensuring level is measured even if the sensor is submerged

Where it Works

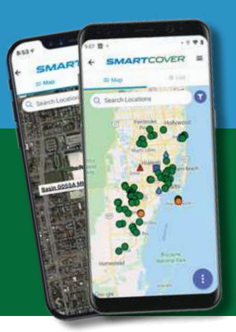
SmartLevel is highly versatile for use within different environments:

- Wastewater collection system
- Raw water conveyance system
- Stormwater system
- Any open water channel
- High frequency cleaning locations
- Siphons and easements
- Older high risk pipes
- Flooding
- Lift station back up
- Environmental or politically sensitive areas

Featuring

- Hardware components engineered to function in wet, humid, corrosive conditions
- Flexible patented sensor designs and deployment
- NO CONFINED SPACE ENTRY* installation or service
- Reduces traffic management resources
- Secure, online dashboard with easy-to-read, visual reports
- Compact, long lasting battery
- Two-way communications permits remote settings management
- Fusion with rain, river and tide data
- Done-for-you analytics
- Works when there is no power
- Satellite coverage works with sites difficult to access and withstands cellular outages
- Variable timing options for data scan and notifications
- Built in tilt switch for real time entry detection
- Encrypted secure servers with redundancy
- Mobile app for iOS and Android
- API available
- Configurations for open channels, canals, holding tanks, lift stations, outfalls, reservoirs, and utility vaults

*as defined by OSHA 29 CFR 1910.146b



With the SmartCover mobile app, get the insights you want, when and where you need them. Available for both iOS and Android devices.

SmartCoverSystems.com

Budget Quote
Ashley Wilks

Hadronex, Inc. DBA SmartCover Systems 2110 Enterprise Street Escondido, CA 92029 USA P: 760-291-1980 F: 760-291-1982	Due Date	Quote Number
		00003071
	Remit PO to orders@smartcoversystems.com or return this quote signed with PO number. Scan of PO is preferred.	

Bill To:	Ship To:	Date	02/21/2025
Integrity Pump Solutions, Inc 504 Millennium Park Lane Suite 101 Caldwell, ID 83605, USA	City of Twin Falls, ID 203 Main Ave E Twin Falls, ID 83301, USA		

#	Product	Description	Qty	Rate	Total
1	SC-D-SB-25	Complete System - SubSonic Dual Sensor (Ultra-Sonic & Pressure) Standard Range 25' DSM. Includes E-Box, PowerPack, Bracket, E-Dot Antenna, & Installation Kit.	8	$4,743.30	$37,946.40
2	ASM-SC1	SmartLevel - REQUIRED with system. ONE Year rate for systems.	8	$430.00	$3,440.00
3	ASM-RD-1Y	SmartRain™ - Rain data service. Per site 1 year rate.	3	$0.00	$0.00
4	IST-1	Website: Initial Website Set-up. This applies to FIRST-TIME customers. One per customer.	1	$900.00	$900.00
5	Freight out	Shipping for hardware	284	$0.00	$0.00

Budget Quote

Ashley Wilks

Terms and Conditions for this transaction:

1. Payment: Net 30 days
2. All pricing subject to change.
3. All hardware, rentals, software subscriptions and renewals may be subject to tax.
4. Taxes were calculated at the time of quote creation and may change at the time of invoice.
5. Customer is responsible for paying the appropriate taxes due at time of invoice.
6. SmartCover is not responsible for the loss of wireless communication or internet communications or any communications used in the operation of this system.

SmartCover is an advisory service only. As such, SmartCover is not responsible for any damage of any kind or from any cause whatsoever that may result from, in relation to, in connection with, due to, or as a result of the installation or operation of the system, including without limitation, equipment failure, or any consequential damages caused by, or resulting from, the use or installation of the SmartCover system.

Signature for Approval ___________________________

P.O. No.

We appreciate your business!

Subtotal	$42,286.40
Tax	$0.00
Total	$42,286.40

SMARTCOVER®

WE'VE GOT IT COVERED™

San Antonio Water System (SAWS)

Optimizes Collection System Cleaning with Real-Time Monitoring and Analytics

San Antonio Water Systems (SAWS) located in San Antonio, Texas, serves a population of about 1.8 million and operates and maintains over 5,700 miles of sewer pipe and about 120,000 manholes. It is one of the largest municipal water systems in the country with more than 11,000 miles of potable water and sewer pipes.

Highlights:

- **Reduced cleaning by 95%**
- **Avoided over 4,000 SSOs since 2009**
- **Saved an estimated $1 million dollars in operational costs**
- **Minimized odor complaints**
- **Increased chemical dosage efficiency**

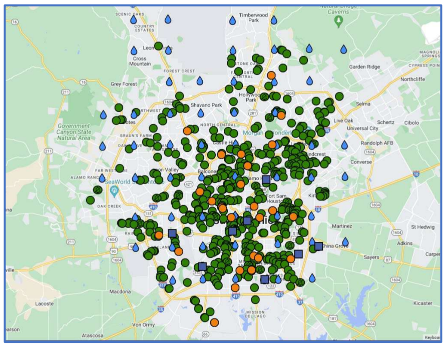
The Challenge

SAWS received an EPA Consent Degree with an estimated cost of 1.2 billion. In response, SAWS adopted the EPA's Capacity, Management, Operations and Maintenance (CMOM) guidelines and instituted high frequency cleaning (HFC) for their pipeline segments. SAWS established a program of routine cleanings at monthly, bi-monthly, quarterly, semi-annual and annual frequencies, identifying 200 high risk sites for regular monthly cleanings.

SAWS also operates an extensive odor and corrosion control program dosing millions of dollars of chemicals per year and operating a network of odor scrubbers to eliminate complains from the community and satisfy their customer base. With the large collection system network, warm temperatures and the need to move wastewater over long distances, odor generation and release is an issue.

The Solution

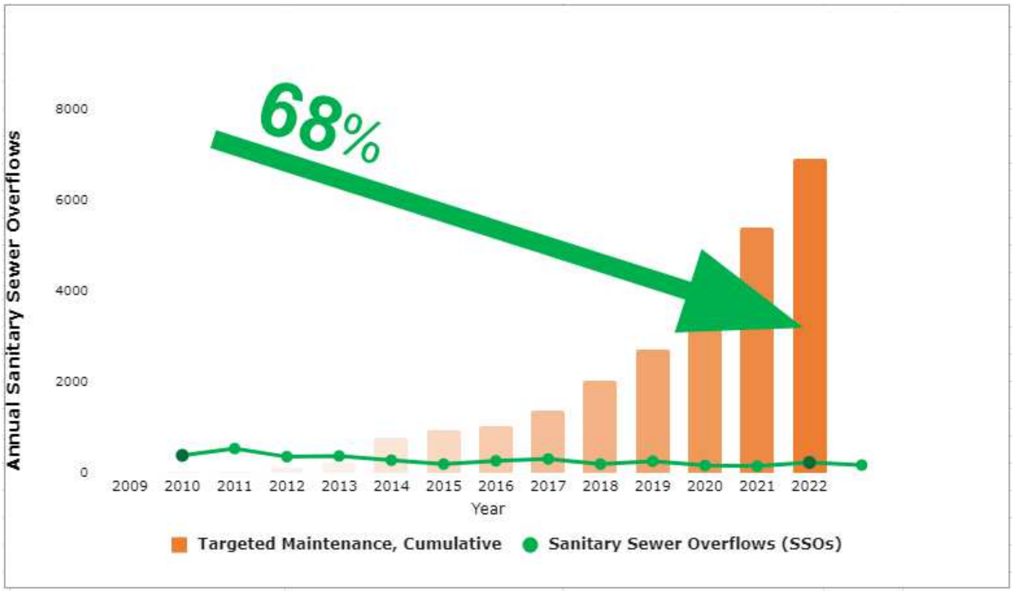
SAWS deployed SmartCover sensors to collect real-time sewer data for both level monitoring and odorous H2S monitoring. The level monitors helped them transition from a routine, calendar-based cleaning system, to a prescriptive "as needed" cleaning program when the data notified them of a potential blockage. The H2S monitors helped identify problem areas and allowed SAWS to better optimize their chemical feeds to minimize spikes that could lead to nuisance odors and community complaints.



SmartCover Current Deployment

The Results

SAWS was able to reduce their collection system cleaning by 95% with zero SSO incidence helping SAWS avoid over 4,000 SSOs since the program's inception. Nearly 1,300 cleanings were scheduled, but only 65 cleanings were identified and performed during the initial deployment alone.



This saved the utility an estimated $1 million in savings. This reduction in routine cleaning led to reduced wear and tear on pipes and preserved operators' time and resources which could be allocated to other activities.

On the odor control side, SAWS was able to better control the variability in H2S levels in their system, reducing odor complaints and allowing their odor scrubbers to operate within specification. SAWS was also able to lower operational costs by reducing the frequency of carbon replacement and decreasing ferrous sulfate addition while improving the performance of their odor control program. With the ease of relocating the H2S units, SAWS has the ability to quickly re-deploy them to newly identified hotspots in order to rapidly collect real-time data that provides valuable troubleshooting insight for Field Investigation.

Conclusion

San Antonio Water System has successfully leveraged smart sewer technology to address their changing infrastructure needs. In addition to a better understanding of their systems, SAWS has prevented sanitary sewer overflows, optimized their cleaning and odor control programs, in turn optimizing resources and preserving utility assets.

The integration of smart sewer technology has allowed improved visualization of site conditions leading to a more proactive versus reactive decision-making process. These 24/7/365 'eyes and ears' of the sewer system have brought peace of mind knowing sewers are being monitored, data is automatically analyzed and plenty of advance notice is provided to assist operators in protecting public health.

SMARTCOVER
A Badger Meter® Brand

Aurora Water, CO

Analyzes Collection System Capacity and Resiliency Using SmartCover Technology

Aurora is Colorado's third largest city, with more than 380,000 residents. The Aurora Water Department (AWD) operates and maintains the city's sanitary sewer and stormwater drainage systems. With accelerating population and construction growth, concerns about sewer system capacity, the cost of capital improvements, environmental sustainability and workplace safety prompted AWD officials to begin strategically preparing for the future.

Highlights:

- **Implemented advanced asset management and real-time monitoring technology to improve operations and long-term planning.**
- **Gained flexibility to easily change monitored sites based on need.**
- **Proactively assessed infiltration and inflow (I&I).**
- **Optimized maintenance schedules and reduced required manpower time during wet weather events.**

The Challenge

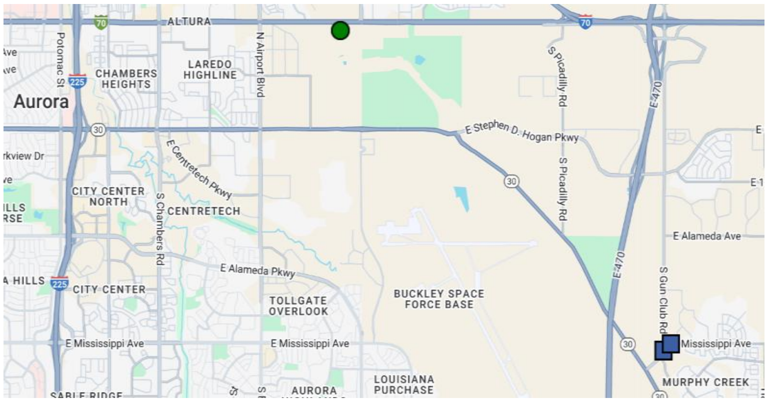
Aurora Water officials wanted a cost-effective way to flexibly gather collection system data that would help operations meet current and future water and sewer capacity requirements and plan for future capital investments to meet the community's rapid growth trends and service and environmental expectations. The wanted to detect inflow and infiltration (I&I) and decrease sanitary sewer overflows.

Analysis of system-wide flow and capacity had been done using 46 flow meters, which were placed at major laterals and interceptor points. While that method gathered baseline data to measure conditions, AWD operators determined it wasn't enough to fully analyze the system's capacity and resiliency.

The Solution

The Phase 2 planning process needed more granular and flexible data collection methods. In 2018, Aurora Water acquired SmartCover real-time SmartLevel™ monitors to enhance the utility's ability to quickly target and analyze specific manholes, without confined space entry dangers or extensive calibration requirements.

The ultrasonic monitors are often placed at high-risk sites with a history of problems, such as I&I, root intrusion and FOG accumulation. The monitors are moved throughout the system as needed to assess various locations.
The monitors are directly mounted underneath existing manhole covers and hatches, and they extend into the sewer pipes.



SmartCover SmartLevel™ deployed in Aurora, CO

The technology monitors the total dynamic range between a sewer pipe's bottom to the top of a manhole. Real-time data is collected using the Iridium Satellite Network, which is supported by the U.S. Department of Defense, and transmitted to a dashboard on a secure website and to a mobile app on cell phones and other mobile communications devices.

The Results

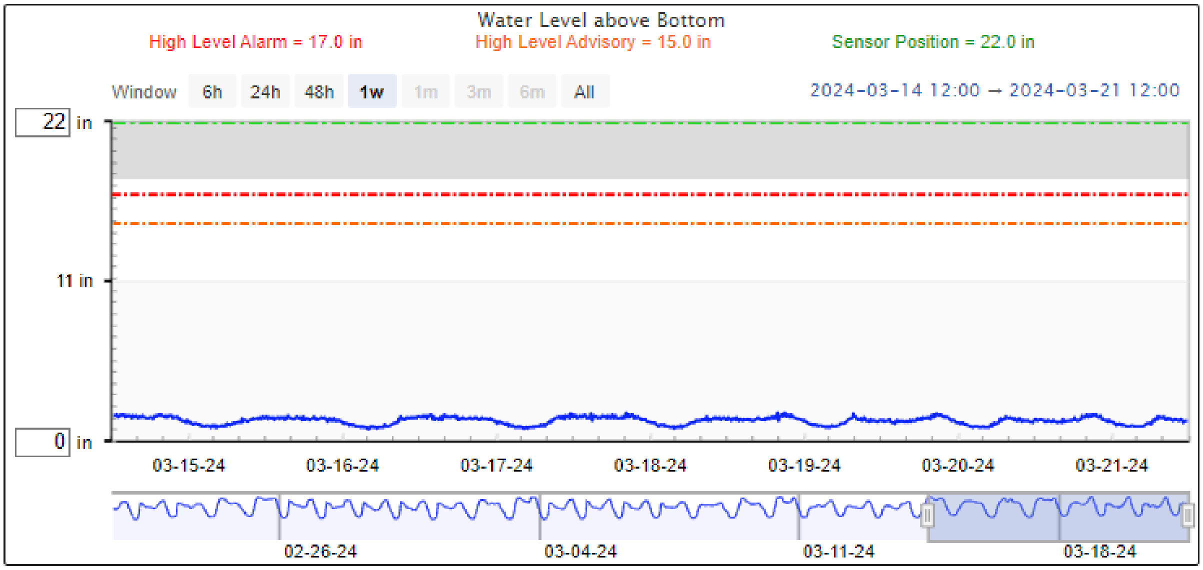
"SmartCover enables us to get more granular on targeting manholes for analysis while avoiding the hassles of confined space entry. The SmartCover software doesn't require taking separate measurements for calibration, so we can immediately collect useful data whenever we redeploy the units to new locations," explained James DeHerrera, PE, Planning Services Manager at Aurora Water. The utility is able to optimize its resources.

Aurora staff check and prepare to relocate SmartCover units without confined space entry

The Conclusion

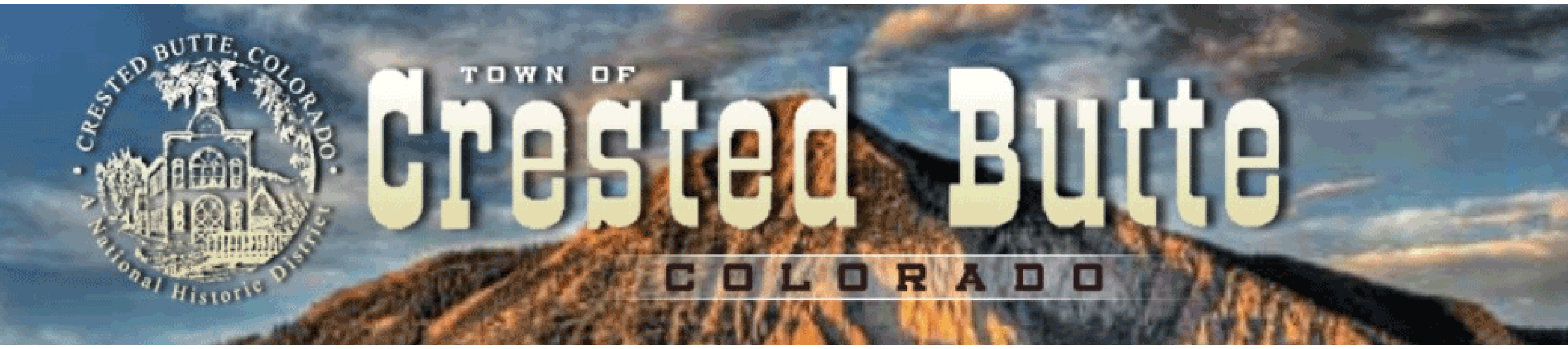
The city of Aurora has 10 SmartCover units that are frequently moved throughout the collection system to monitor different locations for inflow and infiltration (I&I) and to collect detailed data. Accessing more detailed data has helped Aurora Water reduce costs and provided more flexibility in overall operations planning, especially when scheduling cleanings. The data also is used for trend analysis and for reporting.

Response times have improved and staff have safer field change-over conditions by eliminating unnecessary confined entry inspections.



SMARTCOVER

WE'VE GOT IT COVERED™



COLORADO RESORT TOWN AVOIDS BIG PENALTIES WITHOUT BIG REPAIR BILL

BACKGROUND

The Colorado resort town of Mt. Crested Butte is nestled among the Elk Mountain Range with a namesake mountain rising just above town to a height of 12,162 feet with a population of 6,500 year-round residents that can escalate to 10,000 during the peak of ski season.

With four distinct seasons, the local climate makes the town a destination for some of the best year-round recreational activities including alpine, nordic and backcountry skiing, snowboarding, snowshoeing, snowmobiling, mountain biking, climbing, hiking, fly fishing, rafting and kayaking.

THE CHALLENGE

Approximately 14 miles of sewer lines collect wastewater generated in Mt. Crested Butte and Meridian Lake Park and deliver 1.2 million gallons per day to the Mt. Crested Butte, CO Water and Sanitation District's (MCBW&SD) local wastewater treatment plant.

Over 300 manholes and an aging collection system with pervasive inflow and infiltration (I&I) problems, the town experienced a massive sewer spill in 2005 during the holiday season. The Colorado Department of Public Health and Environment (CDPHE) issued a consent decree to the town to fix the problem.

The MCBW&SD Board embarked on a Capital Improvement Project (CIP) study to determine the cost of repairs and replacement. A local architectural engineering firm estimated $10 million in upgrades and repairs were needed. Overburdened by the impending expense and penalties, the MCBW&SD team researched alternative approaches and found SmartCover. In a collaborative risk and cost mitigation effort between MCBW&SD and SmartCover, they proposed to install 10 real-time remote sensors on manhole covers to detect and prevent sewer spills to the CDPHE regulators.

THE SOLUTION

Fortunately, the CDPHE approved the plan and it's been over a decade since the MCBW&SD wastewater department added SmartCover technology to their system. This sewer monitoring and alarm system with specially equipped manhole covers is now using ultrasonic sensors and automated analytics to receive alerts when there is any unusual manhole or sewer line activity.

SmartCover continuously measures water level to 1" accuracy and immediately communicates alarms to sewer staff via wireless satellite signals from deep within the Colorado Rocky Mountains.

MCBW&SD has successfully used SmartCover to monitor their pipes and back up lift stations (without cell service) to completely prevent sewer spills since 2005.

THE RESULTS

With real-time, wireless monitoring of their collection systems, the MCBW&SD found a way out of the traditional path of expensive CIPs, increased rates, and unhappy ratepayers in order to meet regulatory and public pressures.

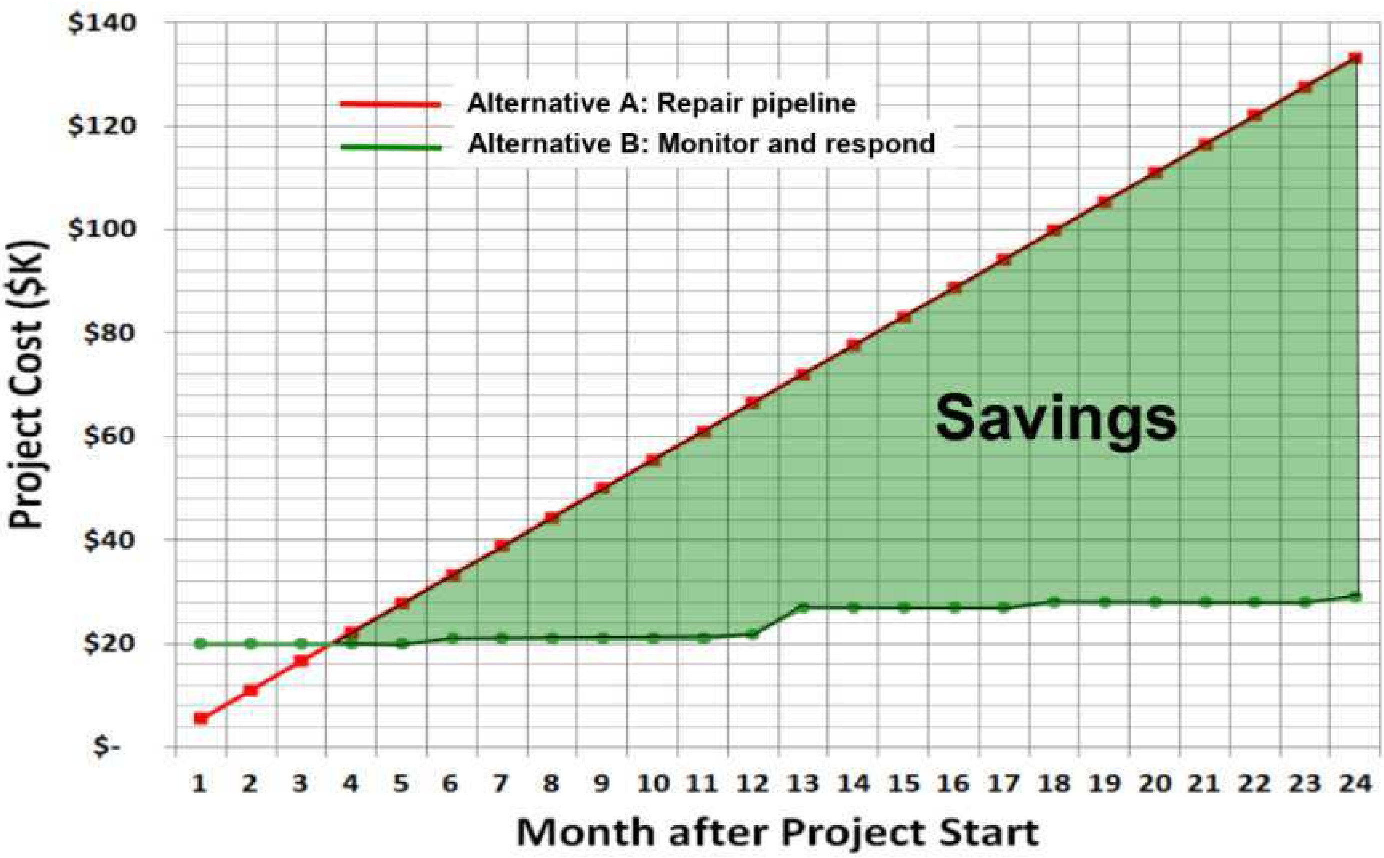
When MCBW&SD faced a $10 million pipeline replacement project necessitated by the state, they were able to obtain relief through the implementation of SmartCover with a continuous level monitoring system costing them significantly less, providing more than a 100:1 in savings.

Since the SmartCover installation, Mt. Crested Butte has had NO SEWER SPILLS and the consent decree was lifted.

LIFTING OF CONSENT ORDER SAVED $10 MILLION

COLORADO APPROVED MONITORS AS ALTERNATIVE, WITH 99% SAVINGS.

Monitoring is more cost-effective than pipe replacement



SUMMARY:

By utilizing long term, remote level monitoring at the locations of proposed CIP, an agency can determine which locations are the "worst offenders," determine mean times to failure, and prioritize projects accordingly. Oftentimes, it is determined that while a location has had some problems, it may not need immediate attention. The project can be deferred to the next budget cycle or further, and the agency still has satisfaction that risk is reduced at problem locations because they have 24/7 monitoring with immediate high water level notification to emergency response personnel.

SmartCoverSystems.com

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WEST COAST CORRECTIONS CAMPUS FINDS ALTERNATIVE TO ENVIRONMENTAL FINES

BACKGROUND

The California Men's Colony (CMC) is a state prison located northwest of the city of San Luis Obispo, along the central California coast approximately halfway between Los Angeles and San Francisco.

With two separate facilities sharing the 356-acre campus, CMC is an important part of the local coastal community, with a commitment to helping preserve the sensitive areas within the surrounding environment.

However, with both CMC facilities built in 1954 and 1961, the aging sewer system can be difficult to manage, monitor and maintain.

Of particular concern is the nearby Chorro Creek, which is the largest waterway feeding Morro Bay. The creek begins in the hills behind CMC, then flows under Highway 1 through nearby Camp SLO and behind Cuesta College, then runs west along Highway 1 to Morro Bay.

THE CHALLENGE

Over the years, there have been a number of sporadic, unplanned spills from the CMC facility due to issues such as I&I and particular challenges associated with unauthorized debris from inmates going into the system.

After a spill of approximately 33,000 gallons in November 2019, the Regional Water Quality Board decided to impose fines along with a consent decree regarding additional sanctions for any future spills.

THE SOLUTION

After reviewing the alternatives. CMC staff proposed using SmartCover to improve real-time monitoring of sewer conditions and predictive capability to manage I&I issues before they result in spills.

Under a contract signed with the Regional Water Quality Board, CMC agreed to an Enhanced Compliance Action (ECA) stipulating a proactive monitoring and management plan with a series of specific milestones and implementation steps.

CMC staff identified 13 locations in the sewer system as key problem areas that would most benefit from real-time monitoring. SmartCovers were quickly installed as per the stipulated schedule at these sites during July and August 2020.

Almost immediately after receiving training with SmartCover, CMC staff began to identify emergent issues within the sewer system, which enabled them to take proactive corrective actions to prevent spills.

13	5	9
Hot Spots	Miles to Closest Waterway	Miles of Gravity Sewer
3K	80%	4.5
Connections	Capacity	Miles of Laterals

FINES AND SANCTIONS HAVE NO ROI, BUT SMART SEWERS DELIVER BIG SAVINGS

COST AVOIDANCE

SmartCover has transformed CMC's ability to monitor and manage the facility's aging sewer system, thereby avoiding big fines from the regional water board and forestalling the need for huge capital expenditures.

"We needed to target our limited budget on things that can make a real difference. Our relatively small investment in SmartCover helped avoid huge fines and prevent spills."

- - Scott Buffaloe, Correctional Plant Manager, CMC

With a well-managed investment in a SmartCover system, the CMC was able to swiftly contain their sewer spill situation. As a result, they have avoided consequential fines that could have overwhelmed their available budget and ultimately wouldn't have made any tangible improvements to the system. CMC's instant infrastructure enhancements have led to immediate ROI evidence with operational improvements and prevention of spills that could potentially result in regulatory sanctions.

IMPROVED MANAGEMENT

According to Scott Buffaloe, Correctional Plant Manager, "SmartCover had additional benefits in terms of improving our notification and response processes. The real-time availability of rich data, coupled with SmartCover software, enabled us to significantly enhance how we respond to emergent issues."

For example, shortly after SmartCover installation, the enhanced notification processes alerted CMC staff to a potential problem with a rapid buildup of plastic in the system from inmates disposing of unauthorized items during Covid lockdowns. Staff plumbers were able to immediately respond and correct the problem before it escalated into causing a major spill.

SUMMARY

As with many government facilities, academic institutions, and private company campuses, the California Men's Colony is like a small city, with significant sewer infrastructures and risk of spills that could impact the surrounding communities.

Just as cities have learned the value of real-time monitoring and data-driven sewer management, other forward-looking entities such as CMC are leveraging SmartCover to achieve similar benefits.

"With SmartCover, we have empowered our staff with new real-time insights into what's happening in the system. That enables us to both save money and to protect the surrounding community from spills."

-- California Men's Colony

	Date:	Monday, March 3, 2025
	To:	Honorable Mayor and City Council
	From:	Mitch Humble, Deputy City Manager

ACTION ITEM

Request:

A request to approve an exchange agreement between the City and the Twin Falls School District regarding the City Pool and the Sawtooth Softball Fields.

Time Estimate:

The presentation and discussion should take about five minutes.

Background:

The City is currently designing a remodel and addition to the City Pool facility. As the Council is aware, the City Pool is located on land owned by the Twin Falls School District. The improvements associated with the addition/remodel will likely outlast the agreement that we have with the District for the use of the property. Therefore, we reached out to the District to inquire about the possibility of them transferring the property to the City. The District is willing to do that. They did ask that if the City ever decides to stop operating the pool in the future, that the City dedicate the property and improvements back to the District. The attached agreement includes these provisions.

In addition to the pool property, the City and District jointly developed and operate the Sawtooth Softball Fields in that same location, adjacent to the pool. We have a 2002 Joint Use and Development Agreement that specifies the details of the softball fields. The Twin Falls High School softball team uses those fields for their program. The team would now like to reserve the use of those fields for just team activities, and no longer be open to the public. The City youth softball programs that we operated there have all been relocated to other fields in the City's park system. The 2002 agreement includes a provision for this scenario. It says that the District can terminate the joint use agreement if they pay the City for the depreciated value of the field improvements constructed by the City. We have reviewed our expenses in these fields and believe that the depreciated value of the improvements is about $10,000. This amount includes only the City's portion of the original improvements with 20+ years of depreciation.

We have prepared the attached exchange agreement that accomplishes a few items. The District agrees to dedicate the land that the pool is located on, along with the open space immediately north of the pool, to the City. The City will continue to give the District-sponsored swim teams priority treatment. The City agrees to dedicate the land and improvements back to the District, should the City ever decide to stop operating the pool. The District will pay the City $10,000 to terminate the joint use of the softball fields. The City will turn over ownership of the softball facilities, including the restroom and maintenance tractor, to the District. And, the City will allow users of the softball fields and tennis courts to use the shared parking lot.

The property that the pool is located on is part of one large parcel that includes Sawtooth Elementary School, the softball fields, the tennis courts, and the pool. Therefore, dedication of the property to the City will require a subdivision of that parcel into three lots. The subdivision process requires a plat to be prepared. The agreement indicates that the City and District will share the cost of developing the necessary plat. Preliminary estimates are that a surveying firm will charge about $45,000 to prepare a plat to accomplish the subdivision of the property. The City has not budgeted funds to pay our half of that cost, so we will need to come back to the Council at a future meeting, once we have an exact cost, to secure the funding for our half of that project.

Approval Process:

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

Budget Impact:

If the Council approves the agreement, the District will pay the City $10,000 for the depreciated value of the original softball field improvements. This money will be received as unanticipated revenue in the General Fund. Also, the City and the District will then need to engage a surveying firm to prepare a plat of the property. There will be a cost associated with that plat preparation. We will come back to the Council at a future meeting with an exact amount and a proposed funding source for that plat preparation. FY 2025 contingency is a possible source of funding for that work.

Regulatory Impact:

Should the Council approve this request, the Mayor will then execute the agreement on behalf of the City. The District will pay the City $10,000. The softball field improvements will be the District's to maintain. The District and the City will engage a surveying firm to prepare a plat to accomplish the subdivision of the parcel into three lots. And the District will then transfer the lot that includes the pool to the City.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the City Council approve the exchange agreement between the City and the Twin Falls School District regarding the City Pool and the Sawtooth Softball Fields as presented.

Attachments:

1. City and School District Exchange Agreement - Pool and Sawtooth Fields - Final
2. Exhibit A1 - Aerial Map of Original Pool Lease - 1988
3. Exhibit A2 - Original Pool Lease - 1988
4. Exhibit B1 - Aerial Map of Sawtooth Fields Joint Use and Development Agreement - 2002
5. Exhibit B2 - Sawtooth Fields Joint Use and Development Agreement - 2002
6. Exhibit C - Aerial Map of Land from District to City

City of Twin Falls and Twin Falls School District #411

Agreement Regarding Exchange of Land and Improvements

(City Pool and the Sawtooth Softball Fields)

This Agreement is made by and between the City of Twin Falls ("City"), 203 Main Avenue East, Twin Falls, Idaho, 83301, and the Twin Falls School District #411 ("District"), 201 Main Avenue West, Twin Falls, Idaho, 83301, and, collectively, referred to as "The Parties."

Recitals

Whereas the City and the District have a long history of collaboration and partnership regarding recreational and athletic programs and facilities, benefiting their shared taxpayers;

Whereas the City and District entered into a lease agreement in 1988 where the City leased a parcel of land from the District to build a pool facility for the use and benefit of both the City and the District, the lease agreement and parcel being more particularly described in attached Exhibit A;

Whereas this lease has a 75-year term, with only 38 years remaining;

Whereas the City constructed the community pool and has operated it on the parcel and would like to continue to operate a pool on the parcel as intended in the lease, for the foreseeable future;

Whereas the City pool is aging and is in need of significant improvements and a remodel to be able to provide community pool services into the foreseeable future;

Whereas the expected lifespan of these improvements is projected to go beyond the expiration of the lease;

Whereas the City, prior to spending significant public funding on improvements that will exceed the term of the lease, would like to now own the underlying parcel;

Whereas the District has used the pool as an athletic facility for its school swimming programs, and desires to continue to do so;

Whereas the City and the District would like to continue the shared facility arrangement for the pool;

Whereas the City and the District entered into a "Joint Use and Development Agreement" in 2002 where the City constructed two softball fields for the use and benefit of both the City and the District on a parcel of land adjacent to the City Pool, the Joint Use and Development Agreement and parcel being more particularly described in attached Exhibit B;

Whereas this Joint Use and Development Agreement has a 99-year term, with 76 years remaining;

Whereas the City constructed the softball fields on the parcel, including a public restroom to serve the softball fields on the District's adjacent parcel to the south of the softball fields;

Whereas the City no longer uses the softball fields for its recreation programs;

Whereas the District uses the softball fields for its Twin Falls High School softball program, and would like to reserve the use of these fields for only that program;

Whereas the Joint Use and Development Agreement indicates that the City and District can agree to discontinue the lease for the softball fields and the District will compensate the City for the value of the improvements constructed on the parcel; and

Whereas the City and District would like to continue a strong collaboration and partnership regarding these two facilities, the pool and the softball fields, for the benefit of their shared taxpayers;

Now, therefore, in consideration of the foregoing and mutual promises and covenants herein contained, the Parties agree as follows:

1. City Considerations – The City agrees to the following:

A. Transfer ownership of the improvements made to the Sawtooth Softball Fields to the District.
B. Transfer the restroom improvements made across Stadium Blvd on the Twin Falls High School (TFHS) football field parcel to the District.
C. Allow users of the TFHS tennis courts and Sawtooth Softball Fields to use the parking lot at the City Pool.
D. Continue to give priority use of the City Pool for District sponsored activities (like school swim team practices and meets).
E. Continue to maintain the City Pool, parking lot, and park north of the pool, which maintenance includes remodels or other capital improvements as may be determined necessary by the City in the future.
F. Continue to participate in the joint use of facilities agreement between the City and the District as it exists, or as amended.
G. The City and District jointly own a tractor for the maintenance of Sawtooth Softball Fields. The City will transfer its half ownership of the existing tractor, in its current state, to the District.
H. Should the City ever decide not to operate the City pool any longer, the City agrees that it will provide written notice to the District of its intent to no longer operate the pool and offer to transfer the pool property and improvements back to the District. The District will have ninety (90) days after the written notice to accept or reject the transfer offer. Should the District reject the offer, the City will thereafter have the right to dispose of the pool, its improvements, and the parcel upon which it sits as the City may deem appropriate.

2. District Considerations – The District agrees to the following:

A. To transfer the land where the City Pool is located to the City. This land includes the pool, parking lot, and park land north of the pool, containing about 4.5 acres (see Exhibit C), understanding the following items are a necessary part of this process:
    1) The pool parcel is part of a larger single lot containing the pool and parking lot, the park north of the pool, the softball fields, the TFHS tennis courts, and Sawtooth Elementary School.
    2) This larger lot will need to be platted to subdivide the lot into multiple smaller lots.

3) The City and District will work cooperatively to create the plat and subdivide the Lot into multiple parcels in a manner that benefits both Parties.
4) The City and District agree to equally share the cost to hire a surveyor to create the plat as described above.

B. Continue to allow the City to use the existing geothermal water source for City Pool operations, as per the current agreement, for as long as the City operates the pool.
C. Take over complete maintenance responsibilities for the Sawtooth Softball Fields and the restroom on the TFHS parcel.
D. Ensure that there is a separate metered water connection serving the Sawtooth Softball Fields. The separate metered water connection includes establishing a billing account with the City for the water used at the Fields.
E. Ensure that there is a separate metered water connection to the restroom on the TFHS football field parcel. The separate metered water connection includes establishing a billing account with the City for the water and sewer used at the restroom.
F. Continue to participate in the joint use of facilities agreement between the City and the District as it exists, or as amended.
G. As specified in the 2002 "Joint Use and Development Agreement," the District will pay the City $10,000 for the depreciated value of the softball field improvements that the City is turning over to the District.

3. Liability

The City agrees to indemnify and hold the District harmless from any and all liability, loss, damage, or claims of any description which results from the negligence of the City and its employees, officers, and/or agents that the District may suffer arising out of, or in connection with, this Agreement and the terms herein. The District agrees to indemnify and hold the City harmless from any and all liability, loss, damage, or claims of any description which results from the negligence of the District and its employees, officers, and/or agents that the City may suffer arising out of, or in connection with, this Agreement and the terms herein.

4. Authorization

The Parties warrant and agree that the persons signing this AGREEMENT on behalf of the City and the District are authorized to sign this AGREEMENT and by doing so agree to the terms contained herein.

5. Termination

This AGREEMENT may be terminated by either party prior to any legal exchange of land or other property discussed herein occurring by delivering written notice to the other party. Upon the legal exchange of land or any other property herein discussed, the obligations contained herein will be permanent and remain in effect. Should either party desire to amend the ongoing obligations, that party shall notify the other of such a desire in writing. In that event, the Parties agree to negotiate amendments in good faith.

6. Entire AGREEMENT

This represents the entirety of the AGREEMENT and cannot be modified unless with the written consent of both Parties.

Agreed and Committed Upon:

City of Twin Falls

DATED this _____ day of _______________, 2025.

____

Ruth Pierce, Mayor

____

Attest

Twin Falls School District #411

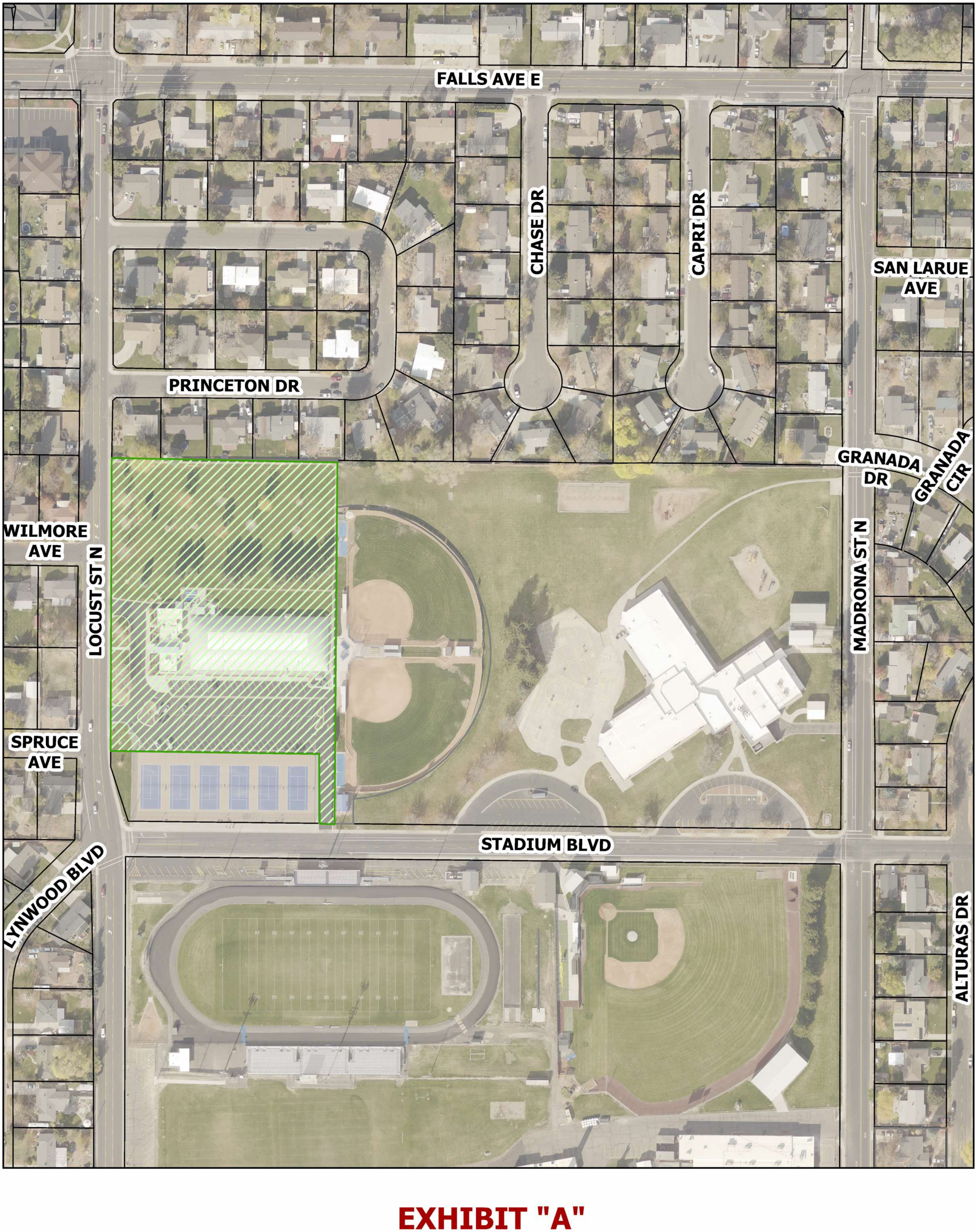
DATED this _____ day of _______________, 2025.

____

Eric Smallwood, Board Chairman

____

Attest


FALLS AVE E
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MADRONA ST N
SPRUCE AVE
STADIUM BLVD
LYNWOOD BLVD
ALTURAS DR

EXHIBIT "A"

Exhibit A

RECEIVED
JAN 22 [illegible]
SCHOOL DISTRICT #411
TWIN FALLS, IDAHO 83301

LEASE

THIS LEASE AGREEMENT, is made and entered into this 19 day of January, ~~1987~~ 1988, by and between the CITY OF TWIN FALLS, State of Idaho, (herein "City"), and TWIN FALLS SCHOOL DISTRICT #411, State of Idaho (herein "School District");

W I T N E S S E T H:

WHEREAS, the parties hereto mutually agree that it is in the best interest of the parties for the City of Twin Falls to build a general use, community swimming pool at a site on School District's property located north of the Twin Falls High School tennis courts which are located near the intersection of Locust Street North and Stadium Boulevard; and,

WHEREAS, the City and School District desire to enter into a lease of the premises hereinafter described; and,

WHEREAS, the parties wish to set forth said lease in writing;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions contained herein, the parties hereto mutually understand and agree as follows:

1. **<u>LEASE OF PREMISES</u>**. The School District hereby leases to City and City hereby leases from School District that certain real property located in Twin Falls City and County, State of Idaho, which is more particularly described on Exhibit "A" and shown on the map, Exhibit "B",

which is attached hereto and incorporated herein as though set forth in full.

2. TERM OF LEASE. This Lease shall be effective upon the execution hereof by the parties and shall continue in full force and effect until terminated under the terms of this Agreement. This Lease shall terminate at the end of the seventy-five (75) year term unless terminated sooner as follows: (1) within three (3) years from the date of execution hereof if construction has not been initiated; (2) within five (5) years from date of execution hereof if construction has not been completed; or (3) one (1) year after the property (once the pool has been constructed) has not been utilized as a City swimming pool. In the event of termination, the City agrees to relinquish possession peacefully, and shall remove improvements at City's expense as directed by School District or School District may agree to accept possession of the property and, thereafter own and be responsible for improvements.

Upon expiration of the seventy-five (75) year lease term, City and School District may extend this Lease on such terms as are then mutually agreeable.

City herein consents to the transfer and sale of Twin Falls Canal water appurtenant to the leased premises and will execute necessary documents as required by School District.

3. SALE OF PREMISES. School District shall not sell the premises as long as City has complied with the

provisions of Article 2 of this Agreement.

4. USE OF GEOTHERMAL WATER. School District has developed and is using .5 c/f/s (224 gallons per minute) of geothermal water pursuant to Water Permit No. 47-7964 for heating School District buildings on a year-round basis in the E 1/2 NW 1/4 of Section 10, T. 10 S., R. 17 E.B.M., within the City of Twin Falls. By this Agreement, School District agrees that City may reuse the discharges from School District's heating system for pool purposes on the premises herein leased after School District has beneficially used the water for heating.

A. City's First Use of Discharge Water and Diversion of Additional Water: School District agrees that City may transfer the point of diversion of City's Permit No. 47-7969 to School District's existing well and divert up to .95 c/f/s (426 gallons per minute) pursuant to City's Permit 47-7969 for the heating of City's pool and the buildings associated with the pool facility at such times as the water is needed for such beneficial purposes; provided that City shall first obtain permission to change the point of diversion to School District's well and the place of use of the water to the leased premises as described in Exhibit "A" hereto by the Idaho Department of Water Resources;

and provided further that City shall only divert water pursuant to Permit No. 47-7969 at such times as the School District's discharges are not adequate for City's beneficial purposes and, then, will divert only such additional water as is required for City's beneficial uses up to .95 c/f/s maximum, it being understood that City will not utilize water in the amounts above the School District's entitlement under the Moratorium Order and Agreement of July 22, 1987, unless the pool and facilities are open for use. The "heating season" of School District is generally from September 15 through May 15, although the period of use may be extended in unusual years.

B. Cost Sharing. City shall be allowed to utilize School District's discharge which heats School District's buildings. This discharge shall be used by City during the "heating season" of the pool and circulated through the pool to prevent the freezing of the pool. School District shall be responsible for the pumping costs incurred during the "heating season". However, in the event City requires more water than that discharged by School District to keep the pool from freezing or, at such time the pool is covered and used during the "heating season", City will pay for its portion of the pumping costs. All pumping costs incurred other than during the "heating season" shall be the responsibility of the City. City shall also be responsible for the pumping costs of any water diverted under their own permit (47-7969) which is in excess of the diversions of the School District. Operation, maintenance, rehabilitation and replacement costs shall be shared by the parties in proportion to the gallons diverted by each in the previous twelve (12) months, the rediversion of School District's water to be added to City's total. In the event major rehabilitation or replacement costs are incurred the first year, the cost-sharing calculation shall be based upon the first full year of operation, after said year of use has passed.

C. Subordination of City's Use: School District shall always be entitled to the first use of the water diverted from said well and any diversions by City of water needed for heating above reuse of School District's discharges shall be subordinated to the diversions of the School District; e.g., if the well will yield only .35 c/f/s because the aquifer has declined or diversions have been restricted by IDWR or a court order, the .35 c/f/s would be first used by School District at such times as the School District needs the water for beneficial purposes, and City would only be entitled to a secondary use of School District's discharges. In such example, the first use of any water by the City could only be made under the provisions of their Permit No. 47-7969.

D. Retrofit: City agrees to pay all costs of retrofitting to School District's system so as to divert the School District's discharges. School District herein gives such permissions as are necessary to cross School District's property for purposes of the connection in locations directed by School District, and City shall be responsible for O & M, rehabilitation and replacement of the retrofit facilities.

E. Water Quality: City agrees that it shall assume and be responsible for meeting water quality standards for all water diverted from School District.

5. **CONTROL AND MANAGEMENT:** The City shall

control the swimming pool complex and shall be responsible for its management. The operating policies and the scheduling of all events and activities for the pool facility shall be set by the City Parks and Recreation Department and approved by the City Council.

6. **SCHOOL DISTRICT USE OF POOL AND FACILITIES:** In the event the School District becomes a user of the facility, it shall abide by such operating policies and scheduling requirements as set forth in Article 5 of this Agreement. School District shall reimburse City for all costs associated with School District's use of the pool facility and agrees to reimburse the City upon receipt of a verified summary of such costs submitted by City to School District.

7. **CONSIDERATION:** Consideration for this Lease is not required pursuant to Idaho Code Section 67-2322, as this Lease is in the best interest of the public in the judgment of the School District.

8. **FEES AND COSTS:** The fees earned from the use of the swimming pool will be property of the City. All costs related to the generation of the fees or otherwise will be the responsibility of the City.

9. **HOLD HARMLESS AND INDEMNIFICATION:** The City agrees to indemnify and release and hold the School District harmless from any and all claims, causes of action, suits, demands, rights, damages, costs and expenses, including attorney's fees, which are asserted against the School

District arising out of City's use of the leased premises; provided that School District shall be responsible for and herein releases and holds City harmless in regard to School District activities which utilize the pool in accordance with Article 6 hereof.

10. __TRAFFIC CONTROL AND PARKING__: City will allow School District to close Stadium Boulevard between Locust Street North and Madrona Street North from 8:00 a.m. to 5:00 p.m. or from one (1) hour before school begins until one (1) hour after school ends on each day school is in session, ~~whichever is less~~. At such time as Stadium Boulevard is completed between Madrona Street North and Eastland Drive North, City will permanently close Stadium Boulevard between Madrona Street North and Locust Street North.

City will provide a continuous two-way, left-turn bay for cars proceeding on Locust Street North from Filer Avenue East to Falls Avenue East. Left-turn lanes will be provided on Locust Street North at Falls Avenue East and on Locust Street North at Filer Avenue East. Pedestrian crossings,including raised, mid-street islands, will be provided on Locust Street North at Stadium Boulevard, Spruce avenue and Wilmore Avenue.

City will pave the approaches, drives and parking areas shown on Exhibit "B", including the drive east of the tennis courts connecting the parking lot with Stadium Boulevard. City will also pave and mark a forty (40) feet deep angle parking area along the south side of Stadium

Boulevard between the curb and the north side of the stadium fence, both east and west of the stadium seating area. School District will move the stadium fence to provide the necessary forty (40) foot depth.

11. <u>ADDITIONAL REQUIRED IMPROVEMENTS</u>: In addition to the construction of the swimming pool, bath house, concrete deck, parking and other improvements shown on Exhibit "B", City agrees to provide for the following additional improvements to be completed within five (5) years of the execution of this Agreement.

A. <u>FENCING</u>. City will construct a six foot (6.0') high chain link fence approximately six hundred sixty two feet (662.0') along the east boundary of the leased property, and a six foot (6.0') high solid wooden fence approximately three hundred eighty-five feet (385.0') along the north boundary of the lease property.

B. <u>LANDSCAPING AND DEVELOPMENT</u>. City shall landscape the leased property generally as shown on Exhibit "B" in accordance with the requirements of the City Zoning Ordinance.

City shall construct a berm with a miniumum height of six feet (6.0') immediately north of the swimming pool area, as shown on Exhibit "B".

The area between the berm and the north boundary of the leased property shall be developed for low intensity use and shall contain no picnic tables, barbecue facilities, or playground equipment and shall be accessible only from Locust Street North.

12. GENERAL MAINTENANCE: The City will maintain the premises in good condition during its tenancy, and shall maintain the grounds with good husbandry practices.

13. LIENS: The City shall keep the premises free and clear from any and all liens, claims and demands for work performed, materials furnished or operations conducted thereon at the request or under the direction of the City.

14. DEFAULT BY CITY: All covenants and agreements contained in this Lease shall be declared to be conditions to this Lease. Should the City default in the performance of any covenant, condition or agreement contained in this Lease, the School District may terminate this Lease and re-enter and regain possession of the premises in the manner then provided by the laws of the State of Idaho then in effect.

15. ATTORNEYS' FEES: In the event of any action or proceeding brought by either party against the other under this Lease term, the prevailing party shall be entitled to recover all costs and expenses including the fee of its attorneys in such action or proceeding, and in such amounts as the Court may adjudge reasonable as attorneys' fees.

16. SUCCESSORS AND ASSIGNS: The terms of this Lease shall be binding upon the successors and assigns of the parties hereto in like manner as upon the original

parties. City shall not assign this Lease to a third party without School District's written permission.

17. SEVERABILITY: Any provisions of this Lease which shall prove to be invalid, void or illegal shall in no way effect, impair or invalidate any of the provisions hereof, and such other provisions shall remain in full force and effect.

18. CHOICE OF LAW: This Lease shall be governed by the laws of the State of Idaho.

IN WITNESS WHEREOF, the City and School District hereunto have caused this Lease Agreement to be executed on the day and year first above written.

CITY OF TWIN FALLS, IDAHO,
a municipal corporation,

By Doug Vollmer
Title Mayor

TWIN FALLS SCHOOL DISTRICT #411

By Calvin Lamborn
Chairman
Board of Trustees

STATE OF IDAHO)
: ss.
County of Twin Falls)

On this 19 day of January, ~~1987,~~ 1988 before me, a Notary Public, personally appeared Doug Vollmer, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that he executed the same on behalf of the CITY OF TWIN FALLS, having lawful authority so to do.

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

Daniel Chandler
NOTARY PUBLIC FOR IDAHO
My Commission Expires 8-11-88

STATE OF IDAHO)
: ss.
County of Twin Falls)

On this 12 day of January, ~~1987,~~ 1988 before me, a Notary Public, personally appeared Calvin Lamborn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledge to me that he executed the same on behalf of the TWIN FALLS SCHOOL DISTRICT #411, having lawful authority so to do.

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

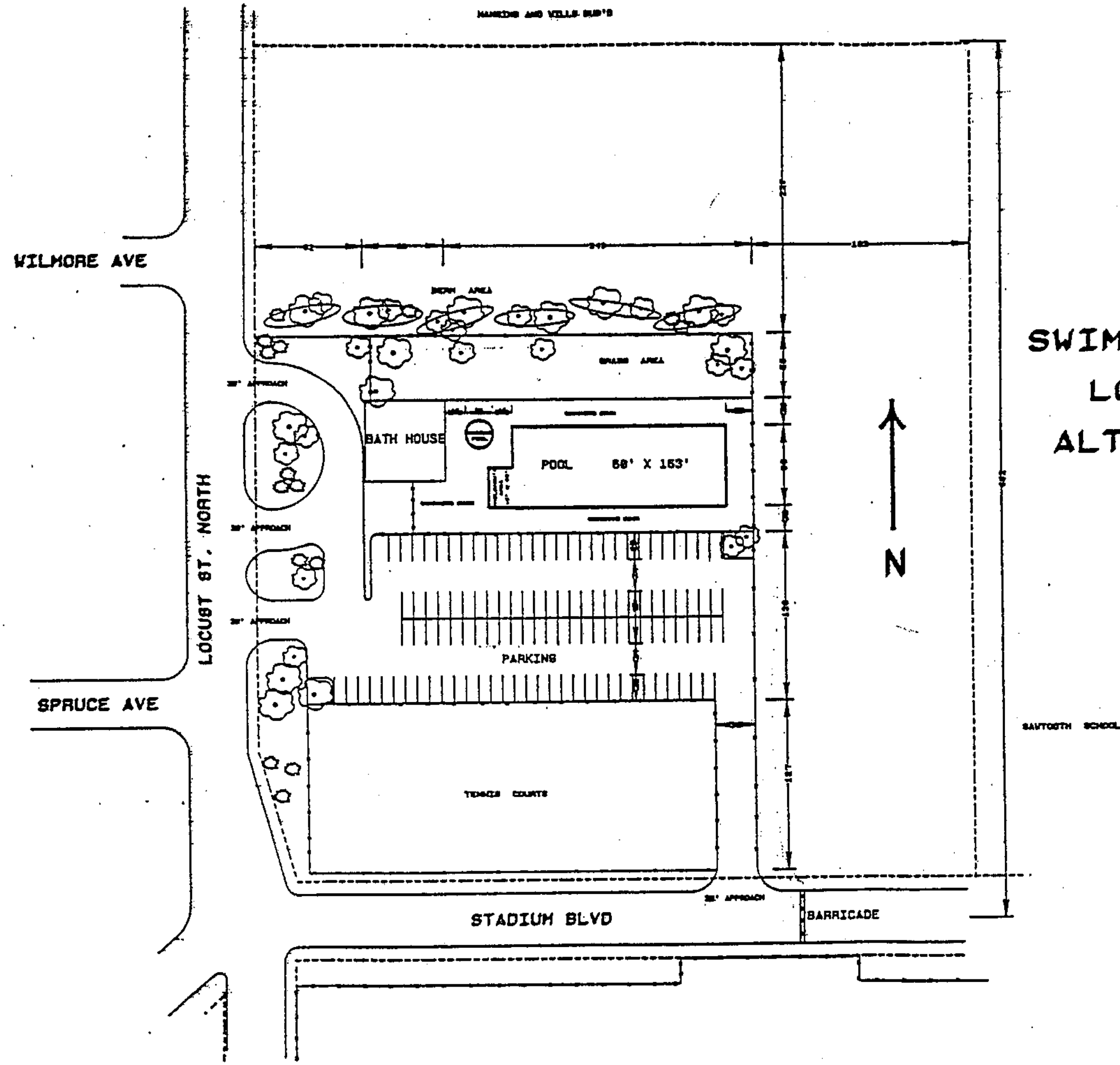
J. Dougherty
NOTARY PUBLIC FOR IDAHO
My Commission Expires 11-19-91

EXHIBIT "A"

A parcel of land located in the SW 1/4 NE 1/4 NW 1/4 of Section 10, Township 10 South, Range 17 East, Boise Meridian, more particularly described as follows:

COMMENCING at the northwest corner of the SW 1/4 NE 1/4 NW 1/4;
THENCE S 89°35' E 30.00 feet to the Point of Beginning;
THENCE continuing S 89°35' E 385.00 feet;
THENCE S 0°01'00" W 504.95 feet;
THENCE N 89°35' W 385.00 feet;
THENCE N 0°01'00" E 504.95 feet to the Point of Beginning.

EXHIBIT A



SWIMMING POOL LOCATION ALTERNATE 1

EXHIBIT B

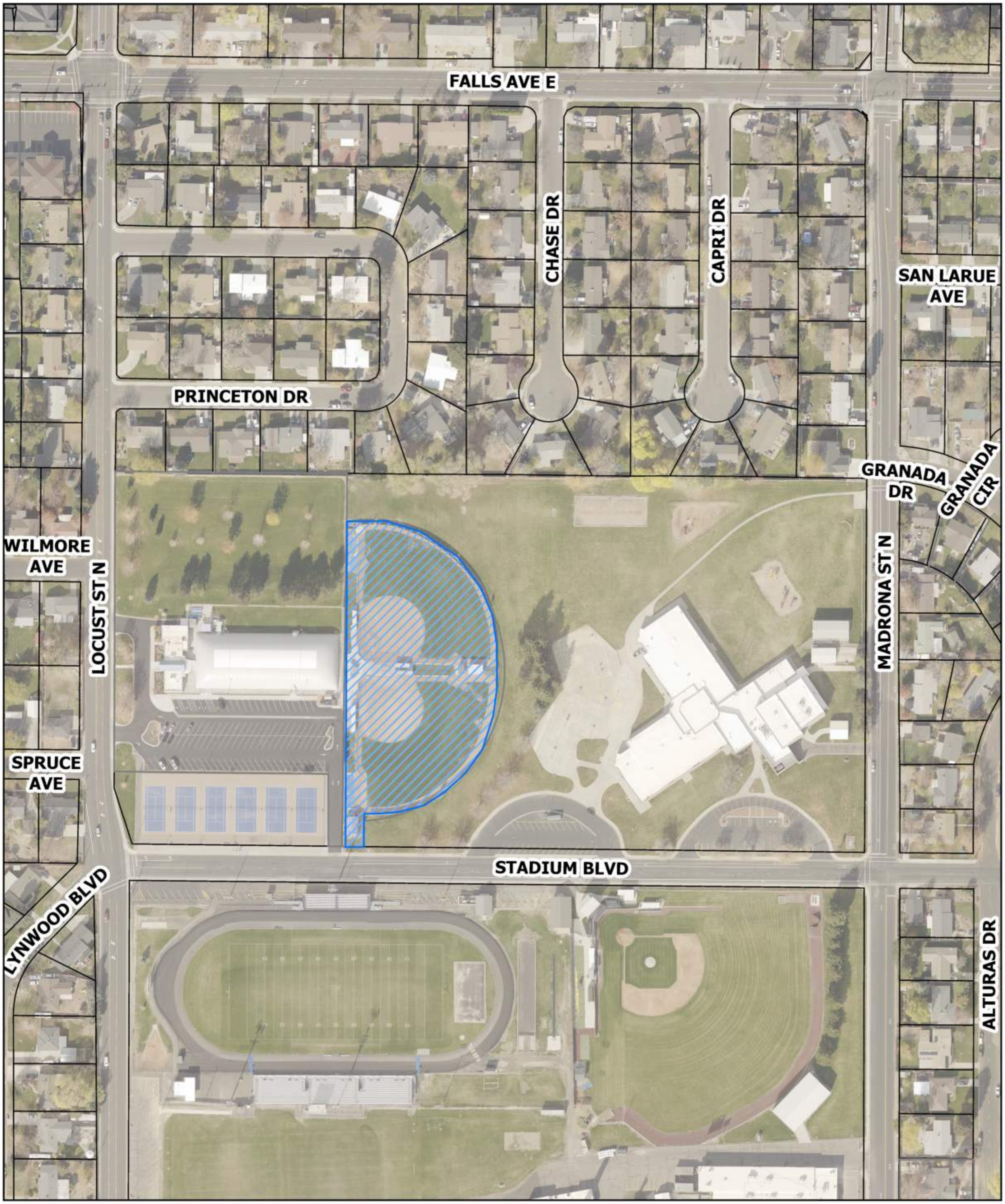

FALLS AVE E
CHASE DR
CAPRI DR
SAN LARUE AVE
PRINCETON DR
GRANADA DR
GRANADA CIR
WILMORE AVE
LOCUST ST N
MADRONA ST N
SPRUCE AVE
STADIUM BLVD
LYNWOOD BLVD
ALTURAS DR

EXHIBIT "B"

Exhibit B

Copy

JOINT USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of September, 2002, by and between SCHOOL DISTRICT NO. 411, (hereinafter called "SCHOOL DISTRICT"), and the CITY OF TWIN FALLS, IDAHO, a municipal corporation, (hereinafter called "CITY").

WHEREAS, SCHOOL DISTRICT and CITY are desirous of entering into an agreement whereby lands owned by SCHOOL DISTRICT can be developed by CITY and SCHOOL DISTRICT for the joint benefit of the parties hereto and the public at large;

WITNESSETH:

For and in consideration of the mutual promises hereinafter Contained, SCHOOL DISTRICT and CITY agree as follows:

1. That the SCHOOL DISTRICT is the owner of land situated in the City and County of Twin Falls, State of Idaho.

2. That the SCHOOL DISTRICT and CITY are desirous of developing two baseball/softball fields and a soccer field on SCHOOL DISTRICT owned land at Sawtooth Elementary School, and for that reason enter into this agreement.

3. That CITY will design and construct two baseball/softball fields to include backstops, fencing and dugouts, and relocate a soccer field on the above described property.

4. That SCHOOL DISTRICT will be responsible for sod removal, sprinkler lines and head relocation, annual installation, removal and storage of outfield fence panels, and maintenance of grass to include irrigation, mowing, fertilizing, weed control and sprinkler maintenance.

5. That CITY and SCHOOL DISTRICT will each pay half of the cost of purchase of bases, a tractor, and maintenance of the fencing (not to include annual installation and removal of outfield fencing), CITY will provide for year round tractor maintenance. If the tractor is damaged, it shall be repaired by the party responsible for the damage.

6. That the CITY and the public at large will have free and complete use of the baseball/softball fields, soccer field and parking areas at all times, except during any practices or games scheduled by the SCHOOL DISTRICT.

7. Responsibility for cleaning and maintenance of the Stadium Blvd. restrooms, pick up of garbage and emptying garbage cans and preparation of the diamonds shall be as follows: May 15 through August 15 by CITY. August 16 through May 14 by SCHOOL DISTRICT.

8. That this agreement shall continue for a period of ninety-nine (99) years, unless otherwise terminated by the parties hereto by mutual agreement in writing. Notwithstanding the foregoing, the SCHOOL DISTRICT shall have the right to terminate this agreement by sixty (60) days written notice to the CITY. If the SCHOOL DISTRICT terminates the agreement, the SCHOOL DISTRICT shall pay the CITY its capital costs for development, less depreciation.

9. That CITY agrees to indemnify and hold harmless the SCHOOL DISTRICT from any claims or causes of action which might arise during the use of said premises other than use by the SCHOOL DISTRICT during scheduled practices or games. SCHOOL DISTRICT agrees to indemnify and hold harmless the CITY from any claims or causes of action which might arise during the use of said premises for regularly scheduled practices or games.

IN WITNESS WHEREOF, The parties hereto have executed this Agreement the day and year first written above.

SCHOOL DISTRICT NO. 411

By ______________________
Chairman, Board of Trustees

CITY OF TWIN FALLS

By ______________________
Mayor

Attest: Rose Steffens
Clerk, Board of Trustees

By Rose Steffens

Attest:

By Jody Hall, Deputy City Clerk

CLASS A SCHOOL DISTRICT No. 411
TWIN FALLS COUNTY
SEAL
IDAHO

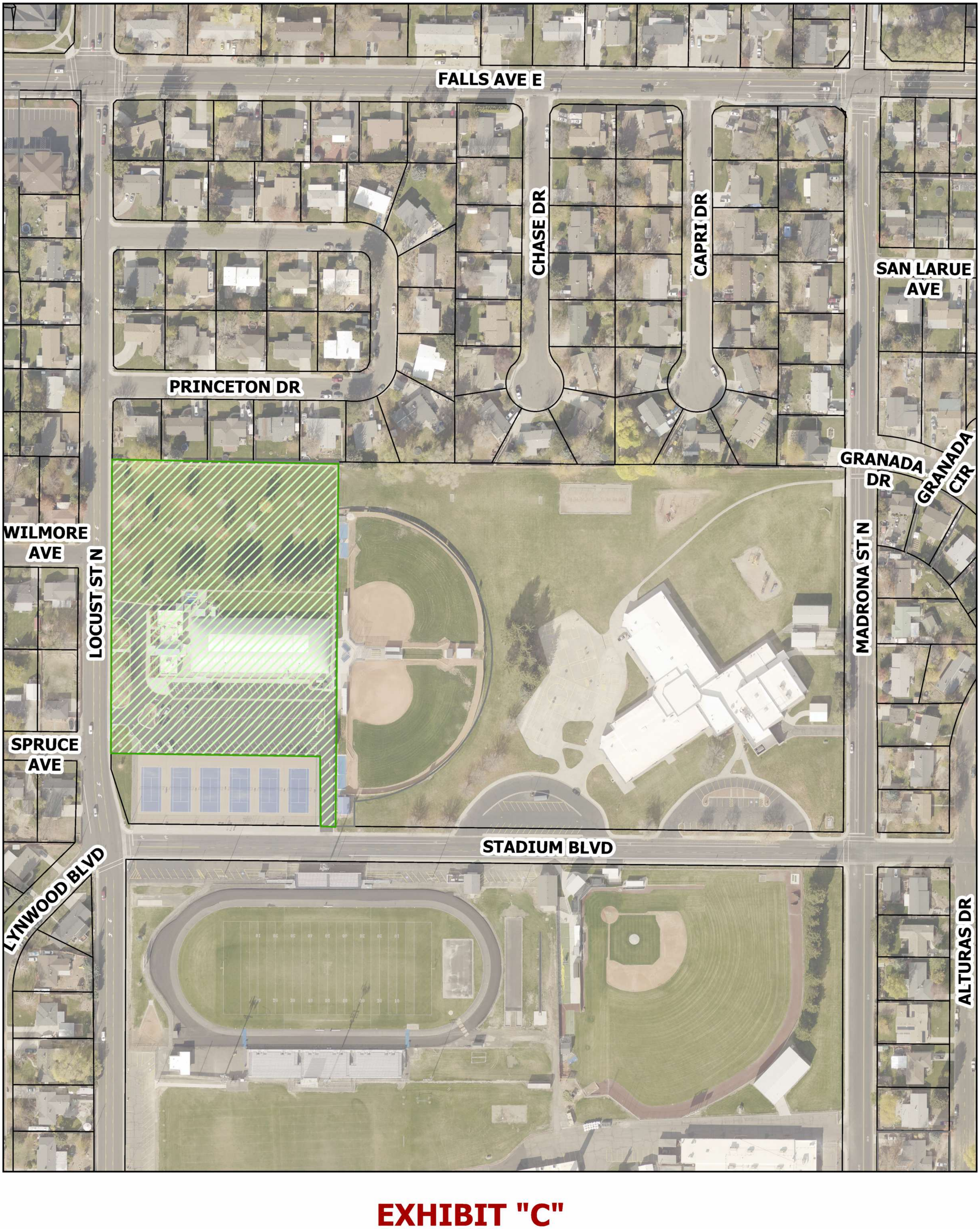

FALLS AVE E
CHASE DR
CAPRI DR
SAN LARUE AVE
PRINCETON DR
GRANADA DR
GRANADA CIR
WILMORE AVE
LOCUST ST N
MADRONA ST N
SPRUCE AVE
STADIUM BLVD
LYNWOOD BLVD
ALTURAS DR

EXHIBIT "C"

Date:	Monday, March 3, 2025
To:	Honorable Mayor and City Council
From:	Mitch Humble, Deputy City Manager

ACTION ITEM

Request:

A request to approve a contract with Starr Corporation to serve as the City's construction manager/general contractor (CM/GC) for the remodel of the former Council Chambers and the Police Administration building.

Time Estimate:

The presentation and discussion should take about five minutes.

Background:

The City has engaged Laughlin Ricks Architecture to design a remodel of the former Council Chambers building to turn half of that space into a gym for City employees and the other half into offices for the City's Legal Department. Laughlin Ricks is also designing a remodel of the Police Administration building to replace the chair lift that has completely failed with a new elevator/lift. Both designs are nearing completion, and we are getting close to being able to proceed with construction. We would like to group the two projects together into one in an effort to improve efficiency and cost.

Starr Corporation was the City's CM/GC on the Police Administration building when it was constructed a few years ago. They were also the CM/GC for the City Hall project a few years ago, which included the current office space for the Legal Department. Idaho Statute allows cities to rehire a CM/GC to complete additional phases of a project without going through the entire qualification-based selection process again. We reviewed this allowance with the City Attorney, and he agreed that this project could be considered an additional phase of both the previous City office space and Police Administration building projects. Starr Corporation did a great job on those two projects for us in the past. So, we reached out to them directly to negotiate a CM/GC contract for this project as the next phase of those two projects. I have attached the contract for the Council's review. Starr is proposing a 7.5% CM/GC fee for their services on this project, with no additional costs for pre-construction services. This fee is very competitive with comparable fees in the market right now. Therefore, staff recommends that the Council approve the attached contract as presented.

Approval Process:

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

Budget Impact:

The FY2025 City budget includes $1,810,000 for this project. That amount was budgeted based on the architect's construction estimate. Once on board, Starr Corporation will prepare a guaranteed maximum price (GMP) for the project. Starr's CM/GC fee will be 7.5% of the GMP amount. We will bring the GMP amount to the Council for review and approval at a future meeting.

Regulatory Impact:

If the Council approves the request, staff will execute the contract and Starr Corporation will begin working with the project architect to finalize construction plans for the project.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the Council approve the contract with Starr Corporation to serve as the City's CM/GC for the remodel of the former Council Chambers and Police Administration building.

Attachments:

1. A133-2019- City of Twin Falls Rev 1

AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Twentieth day of January in the year Two Thousand Twenty-Five
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Twin Falls
203 Main Avenue East
Twin Falls, ID 83301

and the Construction Manager:
(Name, legal status, address, and other information)

STARR CORPORATION
PO Box 46
Twin Falls, ID 83303

for the following Project:
(Name, location, and detailed description)

Public Safety Access Lift and Twin Falls Attorney Offices Renovation

The Architect:
(Name, legal status, address, and other information)

Laughlin Ricks Architecture LLC
134 3rd Ave East
Twin Falls, ID 83301

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:
The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Renovation of building previously used as City Council Chambers to house a gym and attorney offices. Renovate stairs and lift in Public Safety Building to allow for the installation of a new lift.

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

Budget for demolition and renovation is $1.5 Million

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Permit sets ready for submission to City of Twin Falls, February 2025

.2 Construction commencement date:

Will be established after plans have been submitted for review.

.3 Substantial Completion date or dates:

Will be established after plans have been submitted for review.

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Mitch Humble
Deputy City Manager
203 Main Ave East
Twin Falls, ID 83301
mhumble@tfid.org

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Colby Ricks
134 3rd Ave East
Twin Falls, ID 83301

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Jason Derricott
PO Box 46
Twin Falls, ID 83303
208.733.5695
jason@starrcorporation.com

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers
§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement
The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services
Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document
(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date

of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration
§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report
The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs
The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control
The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES
§ 4.1 Information and Services Required of the Owner
§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative
The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect
The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation
§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

No fee will be charged for preconstruction services.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the

Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments
§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 6.1 Contract Sum
§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The construction manager's fee shall be 7.5% of the cost of construction.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

The Construction Manager's Fee shall be applied to all changes of work associated with the scope of work included in the GMP.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Twelve percent (12%) maximum.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent (90%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

§ 6.1.7 Other:
(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price
The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work
§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE
§ 7.1 Costs to Be Reimbursed
§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs
§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Lump sum included in CM/GC fee set forth in 6.1.2.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies
§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- **.2** Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- **.3** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.4** Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- **.5** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.6** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- **.7** Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- **.9** Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

At the discretion of the owner.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

All closeout documents including warranties must be submitted and approved before retainage is released.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

.1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document

A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[X] Arbitration pursuant to Article 15 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment
§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment
§ 13.2.1 Termination
The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause
§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
.3 Subtract the aggregate of previous payments made by the Owner; and
.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience
If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million ($1,000,000.00) for each occurrence and Two Million ($2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million ($1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million ($1,000,000.00) each accident, One Million ($1,000,000.00) each employee, and One Million ($1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million ($1,000,000.00) per claim and One Million ($1,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
Builders Risk Insurance	Full value of the project(s)

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT
§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds

.4 AIA Document A201™–2017, General Conditions of the Contract for Construction

.5 Building Information Modeling Exhibit, if completed:

.6 Other Exhibits:
(Check all boxes that apply.)

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
BY: MITCH HUMBLE, DEPUTY CITY MANAGER	BY: MICHAEL ARRINGTON, PRESIDENT
(Printed name and title)	*(Printed name and title)*