



Twin Falls City Council Agenda

Monday, October 19, 2020, 5:00 PM

City Council Chambers
203 Main Avenue East- Twin Falls, Idaho

Members: Suzanne Hawkins, Craig Hawkins, Nikki Boyd, Shawn Barigar, Gregory Lanting, Christopher Reid, Ruth Pierce

- 1) CALL MEETING TO ORDER/CONFIRMATION OF QUORUM
- 2) PLEDGE OF ALLEGIANCE
- 3) PROCLAMATIONS: None
- 4) CONSENT CALENDAR
 - a) **ACTION ITEM:** Request to approve the Accounts Payable for October 8-14, 2020.
By: Amy Luna, Finance Administrative Assistant
 - b) **ACTION ITEM:** Request to approve the October 12, 2020, City Council Minutes.
By: Amy Luna, Finance Administrative Assistant
- 5) ITEMS OF CONSIDERATION
 - a) **INFORMATIONAL:** Presentation by Joshua W. Kern M.D., Vice President of Medical Affairs, St. Luke's Health System.
By: Travis Rothweiler, City Manager
 - b) **ACTION ITEM:** Request to confirm Mayor Hawkins' recommendation to appoint Lisa Maas to serve on the Historic Preservation Commission.
By: Suzanne Hawkins, Mayor
 - c) **ACTION ITEM:** Request to adopt Ordinance #O-2020-015 for the Perrine Pointe Subdivision Vacation of Easements for blocks 2, 3, & 4.
By: Jonathan Spendlove, Planning & Zoning Director
 - d) **ACTION ITEM:** Request to adopt Ordinance #O-2020-016 for the rezoning of Lot 5, Block 1 of the Fieldwood Subdivision.
By: Jonathan Spendlove, Planning & Zoning Director
 - e) **ACTION ITEM:** Request to approve Ordinance #2020-017 for changes to Title 3 Business Regulations - Chapter 18 Commercial Vending.
By: Janie Higgins, Accounting Specialist
 - f) **ACTION ITEM:** Request to purchase a John Deere 672G motor grader with 6WD for \$237,439.70 using a Cooperative Purchasing Agreement with Sourcewell.
By: Jon Caton, Public Works Director
 - g) **ACTION ITEM:** Request to approve the CH2M/Jacobs Yearly Contract Amendment.
By: Jason Brown, Environmental Engineer

- h) **ACTION ITEM:** Request to authorize the Mayor to sign the IDWR Flood Management Grant Agreement.
By: Jason Brown, Environmental Engineer
- i) **ACTION ITEM:** Request to approve a Resolution #2020-017 to update the City of Twin Falls Industrial Pretreatment Enforcement Response Plan.
By: Jason Brown, Environmental Engineer
- j) **ACTION ITEM:** Request to adopt an Ordinance #2020-018 to update the current Twin Falls Sewer Use Ordinance.
By: Jason Brown, Environmental Engineer
- 6) **GENERAL PUBLIC INPUT**
- 7) **ADVISORY BOARD REPORT/ANNOUNCEMENTS**
- 8) **PUBLIC HEARINGS**
 - a) **ACTION ITEM:** Request for an Amendment to the Latitude 42 PUD to modify allowed uses and remove restrictions on outdoor storage on property located at 1291 Latitude Circle c/o Gerald Martens. (PZ20-0100) On September 22, 2020, the Planning and Zoning Commission recommended approval to City Council by a vote of 6-0.
By: Jonathan Spendlove, Planning & Zoning Director
 - b) **ACTION ITEM:** Request to vacate a platted easement on property located at 727 Aspenwood Lane c/o Tim T. Mingo. (PZ20-0105) On September 22, 2020, the Planning and Zoning Commission recommended approval to City Council by a vote of 6-0.
By: Jonathan Spendlove, Planning & Zoning Director
- 9) **ADJOURNMENT**

Any person(s) needing special accommodations to participate in the above-noticed meeting could contact Leila Sanchez (208) 735-7287 at least two working days before the meeting. Si desea esta información en español, llame Leila Sanchez (208) 735-7287.

Public Input Procedures

1. Individuals wishing to provide public input regarding matters relevant to the City of Twin Falls shall:
 - Wait to be recognized by the Mayor or Chairman
 - Approach the microphone/podium
 - State their name, and whether they are a resident or property owner in the City of Twin Falls, and proceed with their input.
2. The Mayor or Chairman may limit input to no less than two (2) minutes. Individuals are not permitted to give their time to other speakers.

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, October 12, 2020, 5:00 PM

City Council Chambers
203 Main Avenue East- Twin Falls, Idaho

1) CALL MEETING TO ORDER/CONFIRMATION OF QUORUM

Present: Mayor Suzanne Hawkins, Vice Mayor Ruth Pierce, Council Member Shawn Barigar (by Phone), Greg Lanting, Christopher Reid
Absent: Council Member Nikki Boyd & Craig Hawkins
Staff Present: City Manager Travis Rothweiler, Deputy City Manager Mitch Humble, City Attorney Shayne Nope, Police Chief Craig Kingsbury, Airport Manager Bill Carberry, Finance Administrative Assistant Amy Luna

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

2) PLEDGE OF ALLEGIANCE

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

3) PROCLAMATIONS

4) CONSENT CALENDAR

MOTION: Council Member Reid moved to approve the Consent Calendar as presented. **Vice Mayor Pierce** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 5 to 0

- a) Request to approve the Accounts Payable for October 1-7, 2020.
- b) Request to approve the Wells Fargo Credit Commercial Card for August 2020
- c) Request to approve September 28, 2020, City Council Minutes.
- d) Request to approve October 5, 2020, City Council Minutes.

5) ITEMS OF CONSIDERATION

- a) Presentation by Joshua W. Kern M.D., Vice President of Medical Affairs, St. Luke's Health System.

Mayor Hawkins introduced Dr. Kern, Vice President of Medical Affairs, St. Luke's Health System.

Discussion ensued on the following:

Council Member Reid: What is the age range of the current patients?

Council Member Barigar: Shared his concern with the rise in the spread of the virus.

Mayor Hawkins thanked Dr. Kern for his information.

- b) Swearing in of Twin Falls Police Department Officers Tyler Kuder and Ilse Sanchez, discussion on POST certifications and the hiring of new employees.

Chief Kingsbury performed the swearing-in of Twin Falls Police Department Officers Tyler Kuder & Ilse Sanchez & Discussed POST certifications and the hiring of new employees.

Chief Kingsbury announced the following:

Citizen Employee of the Year **Debora Kelley**

Officer of the Year **Bradley Baisch**.

Mayor Hawkins performed the swearing-in of the Twin Falls Police Department Officers Tyler Kuder & Ilse Sanchez. **Chief Kingsbury** pinned their badges on each new employee.

Chief Kingsbury announced the completion of the following certificates:

Basic Certificate for Officers Joel Smith, Liz Guzman, Matthew Rickards & Kyler Jordan.

Intermediate Certificate for Officer Braxton Christensen, Bradley Baisch & Dzevad Mandzic.

Management Certificate Lieutenants Brent Wright & Charles Garner.

Welcomed three new members to the Team: Executive Assistant - Office of the Chief Jennifer Church, Records Clerks Kenia Hernandez & Katie Gardner.

- c) Request to allow Chief of Police Craig Kingsbury permission to sign a Memorandum of Understanding with the Twin Falls County Prosecuting Attorney's Office regarding Drug Asset Forfeiture.

Chief Kingsbury requested to allow him to sign a Memorandum of Understanding with the Twin Falls County Prosecuting Attorney's Office regarding Drug Asset Forfeiture.

Discussion ensued on the following:

Council Member Barigar: Asked about the classification of the Drug Arrests. How does this work with the fines? Spoke in support of working with the

Ms. Austin, from the Twin Falls County Prosecuting Attorney's Office, addressed the question about court fees.

MOTION: Vice Mayor Pierce moved to approve the request to allow Chief Kingsbury to sign a Memorandum of Understanding with the Twin Falls County Prosecuting Attorney's Office regarding Drug Asset Forfeiture. **Council Member Reid** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 5 to 0.

- d) Request to select JUB Engineering for Future FAA Airport Improvement Projects.

Airport Manager Carberry requested to select JUB Engineering for Future FAA Airport Improvement Projects.

Discussion ensued on the following:

Council Member Lanting: Does this mean that they can be the Engineer even if it is not through FAA?

MOTION: Council Member Lanting moved to approve the request to select JUB Engineering for Future FAA Airport Improvement Projects. **Vice Mayor Pierce** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 5 to 0.

6) GENERAL PUBLIC INPUT: None

7) ADVISORY BOARD REPORT/ANNOUNCEMENTS

Council Member Reid asked what platform Dr. Kern is calling in on and if the other Council Members are getting feedback during the calls.

Mayor Hawkins spoke about the Youth Council events.

Mayor Hawkins talked about the Trick-or-Treating being legal in Twin Falls. A Video will be posted on the Cities web site for suggestions to stay safe, produced by the Youth Council.

Council Member Barigar encouraged citizens to please follow the guidelines of the CDC and Health Department.

8) PUBLIC HEARINGS: None

9) ADJOURNMENT

- a) Request to adjourn to Executive Session 74-206(1)(c) to acquire an interest in real property not owned by a public agency.

Canceled

The meeting adjourned at 05:56 PM

Amy Luna, Finance Administrative Assistant



Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Lisa Strickland, City Planner

ACTION ITEM

Request:

Request to confirm Mayor Hawkins' recommendation to appoint Lisa Maas to serve on the Historic Preservation Commission.

Time Estimate:

Mayor Hawkins will present her recommendation to Council. Anticipated time for presentation and questions is estimated at approximately 5 minutes.

Background:

Terms for the Historic Preservation Commission run from July 1st to June 30, should a member resign prior to their term ending the new appointee will complete the remainder of the term and be eligible to serve two full three year terms.

City staff posted a vacancy notice in June 2020 and received four applications with an interest in serving. The interview panel consisted of HPC Chair Samra Culum, City Council Liaison Craig Hawkins, and City Planner Lisa Strickland. The panel selected Lisa Maas and if appointed will serve a partial term ending June 30, 2022.

Approval Process:

City Code 2-7-3 states: Historic Preservation Commissioners are appointed by the Mayor and confirmed by the City Council.

It has been the City's policy to conduct interviews when vacancies occurred due to resignation, terms not being renewed or members serving their full terms.

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

Budget Impact:

N/A

Regulatory Impact:

N/A

History:

Analysis:

N/A

Conclusion:

I recommend that Council confirm my recommendation to appoint Lisa Maas to serve on the Historic Preservation Commission.

Attachments:

None



Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Jonathan Spendlove, Planning & Zoning Director

ACTION ITEM

Request:

Request to adopt Ordinance #O-2020-015 for the Perrine Pointe Subdivision Vacation of Easements for blocks 2, 3, & 4.

Time Estimate:

Approximately five (5) minutes for presentation and questions.

Background:

On June 23, 2020, the Planning and Zoning Commission sent a positive recommendation to the City Council for the vacation of easements for blocks 2, 3, and 4 for the Perrine Pointe Subdivision, as requested by the applicant.

On September 21, 2020, the City Council heard, deliberated and approved the vacation of easements for the property located at blocks 2, 3, and 4 of the Perrine Pointe Subdivision.

Approval Process:

In order to enact this ordinance today, Council would need to suspend the rules and place it on third and final reading by motion, and majority +1 consent.

Budget Impact:

N/A

Regulatory Impact:

Approval of this request will remove the limitation, or entitlement, for the specific area, as described on the plat or in other recorded documents. This area will become private property, and subject to current rules and regulations for taxes, zoning code compliance, and development.

History:

N/A

Analysis:

N/A

Conclusion:

As directed by Council, staff has prepared an ordinance to finalize the Vacation process.

Attachments:

1. PZ20-0051 Perrine Pointe Vacation ordinance draft

ORDINANCE NO. O-2020-015

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF
THE CITY OF TWIN FALLS IDAHO, **VACATING THE EASEMENT**
DESCRIBED BELOW.

WHEREAS, Tres Gringos has made application for vacation of the easement located in the Blocks 2, 3, and 4 of the Perrine Pointe Subdivision; in the City of Twin Falls; and

WHEREAS, the City Planning & Zoning Commission for the City of Twin Falls, Idaho, held a Public Hearing as required by law on the 23rd day of June, 2020, to consider the vacation of the easement below described; and,

WHEREAS, the City Planning & Zoning Commission has made recommendations known to the City Council for Twin Falls, Idaho; and,

WHEREAS, the City Council for the City of Twin Falls, Idaho, held a Public Hearing as required by law on the 21st day of September, 2020.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TWIN FALLS, IDAHO:

SECTION 1. The following described easement is hereby VACATED:

"Exhibit A" - Legal Description

SECTION 2. That the City Clerk immediately upon the passage and publication of this Ordinance as required by law certify a copy of the same and deliver said certified copy to the County Recorder's Office for indexing and recording, in the same manner as other instruments affecting the title to real property, as required by Idaho Code 50-1324(2).

PASSED BY THE CITY COUNCIL _____, 20____

SIGNED BY THE MAYOR _____, 20____

Mayor

ATTEST:

Deputy City Clerk

PUBLISH: Thursday, _____, 20____

Ordinance No.

Page 1 of 4

Application No. PZ20-0051

Exhibit "A"
Legal Description
Easements to be Vacated, Perrine Point Subdivision
Twin Falls County, Idaho

Being a portion of Blocks 2, 3 and 4 as shown on that certain map entitled "Perrine Point Subdivision", recorded May 5, 2008 as Instrument No. 2008-010805 in the office of the County Recorder of Twin Falls County, comprised of three (3) parcels, more particularly described as follows:

Parcel 1

Being a portion of the certain Easement entitled "Public Utilities, Cross Access, Drainage, Landscape and Irrigation Easement", located within said Block 2, and as shown on sheet 10 of 13 on said map, described as follows:

Beginning at the Northeast corner of Lot 1, Block 2 as shown on said map;
Thence, along the North Boundary of said Lot 1, South 85°20'45" East 39.62 feet;
Thence, leaving said North Boundary, South 00°11'02" West 15.05 feet and being the REAL POINT OF BEGINNING;
Thence, South 00°11'02" West 396.04 feet;
Thence, North 86°12'50" West 148.29 feet;
Thence, North 00°11'02" East 150.75 feet;
Thence, North 89°48'58" West 144.27 feet;
Thence, North 03°47'10" East 74.15 feet;
Thence, South 89°48'58" East 139.62 feet;
Thence, North 00°11'02" East 173.55 feet;
Thence, South 85°20'45" East 148.45 feet to said REAL POINT OF BEGINNING.

Parcel 2

Being a portion of the certain Easement entitled "Public Utilities, Cross Access, Drainage, Landscape and Irrigation Easement", located within said Block 3, and as shown on sheet 11 of 13 on said map, described as follow:

Beginning at the Northwest corner of Lot 4, Block 3 as shown on said map;

Thence, along the North Boundary of said Lot 4, South $86^{\circ}12'50''$ East 39.58 feet;

Thence, leaving said North Boundary, South $03^{\circ}47'10''$ West 15.00 feet and being the REAL POINT OF BEGINNING;

Thence, South $03^{\circ}47'10''$ West 152.81 feet;

Thence, South $49^{\circ}20'38''$ East 15.78 feet;

Thence, South $40^{\circ}39'22''$ West 15.00 feet;

Thence, North $49^{\circ}20'38''$ West 16.94 feet;

Thence, North $86^{\circ}12'50''$ West 30.07 feet;

Thence, South $03^{\circ}47'10''$ West 100.00 feet;

Thence, North $86^{\circ}12'50''$ West 74.00 feet;

Thence, North $03^{\circ}47'10''$ East 100.00 feet;

Thence, North $86^{\circ}12'50''$ West 200.15 feet;

Thence, North $03^{\circ}47'10''$ East 74.00 feet;

Thence, South $86^{\circ}12'50''$ East 235.00 feet;

Thence, North $03^{\circ}47'10''$ East 90.11 feet;

Thence, South $86^{\circ}12'50''$ East 79.15 feet to said REAL POINT OF BEGINNING.

Parcel 3

Being a portion of the certain Easement entitled "Public Utilities, Cross Access, Drainage, Landscape and Irrigation Easement", located within said Block 4, and as shown on sheet 11 of 13 on said map, described as follows:

Commencing at the Southeast corner of Lot 15, Block 4 as shown on said Map;
Thence, along the South Boundary of said Lot 15, North $86^{\circ}12'50''$ West 75.00 feet;

Thence, leaving said South Boundary, North $00^{\circ}47'10''$ East 20.00 feet and being the REAL POINT OF BEGINNING;

Thence, North $03^{\circ}47'10''$ East 227.98 feet;

Thence, along the arc of a non-tangent curve to the right having a radius of 460.00 feet, through a central angle of $19^{\circ}16'57''$, an arc distance of 154.81 feet and a chord that bears North $80^{\circ}34'10''$ East 154.08 feet;

Thence, South $03^{\circ}47'10''$ West 263.21 feet;

Thence, North $86^{\circ}12'50''$ West 150.00 feet to said REAL POINT OF BEGINNING.



Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Jonathan Spendlove, Planning & Zoning Director

ACTION ITEM

Request:

Request to adopt Ordinance #O-2020-016 for the rezoning of Lot 5, Block 1 of the Fieldwood Subdivision.

Time Estimate:

Approximately five (5) minutes for presentation and questions.

Background:

On August 25, 2020 the Planning and Zoning Commission sent a positive recommendation to City Council for this Zoning Designation change and Zoning Map Amendment to R-2.

On September 21, 2020 the City Council heard, deliberated and approved the Zoning Designation Change and Zoning Map Amendment to R-2 for the rezoning of Lot 5, Block 1 of the Fieldwood Subdivision, as requested by the applicant.

Approval Process:

In order to enact this ordinance today, Council would need to suspend the rules and place it on third and final reading the motion, and majority +1 consent.

Budget Impact:

N/A

Regulatory Impact:

The passing of this ordinance will change the zoning district of the property and new rules will apply to this property in regards to land use and other development criteria.

History:

N/A

Analysis:

N/A

Conclusion:

As directed by Council, staff has prepared an ordinance to finalize the Zoning District Change and Zoning Map Amendment process.

Attachments:

1. PZ20-0087 Fieldwood rezone ordinance draft

ORDINANCE NO. O-2020-016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, **REZONING** CERTAIN REAL PROPERTY BELOW DESCRIBED, PROVIDING THE ZONING CLASSIFICATION THEREFORE, AND ORDERING THE NECESSARY AREA OF IMPACT AND ZONING DISTRICTS MAP AMENDMENT

WHEREAS, Wills, Inc. has made application for rezoning of property located at Lot 5, Block 1, Fieldwood Subdivision; City of Twin Falls, and an amendment of the revised Area of Impact and Comprehensive Plan Land Use Map; and

WHEREAS, the City Planning & Zoning Commission for the City of Twin Falls, Idaho, held a Public Hearing as required by law on the 25th day of August, 2020, to consider the Zoning Designation and necessary Zoning & Planning Map amendment upon a rezone of the real property below described, and an amendment to the revised area of Impact and Comprehensive Plan Land Use Map; and,

WHEREAS, the City Planning & Zoning Commission has made recommendations known to the City Council for Twin Falls, Idaho; and,

WHEREAS, the City Council for the City of Twin Falls, Idaho, held a Public Hearing as required by law on the 21st day of September, 2020.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TWIN FALLS, IDAHO:

SECTION 1. The following described real property located at Lot 5, Block 1, Fieldwood Subdivision is the subject of a Zoning District Change and Zoning Map amendment from R4 PRO PUD to R2.

Lot 5, Block 1, Fieldwood Subdivision

SECTION 2. That the Area of Impact and Zoning Districts Map for the City of Twin Falls, Idaho, be and the same area hereby amended to reflect the rezoning designation of the real property above described.

SECTION 3. Public services may not be available at the time of development of this property, depending upon the speed of development of this and other developments, and the ability of the City to obtain additional water and/or

sewer capacity. The annexation of this property shall not constitute a commitment by the City to provide water and/or wastewater services.

PASSED BY THE CITY COUNCIL _____, 20____

SIGNED BY THE MAYOR _____, 20____

Mayor

ATTEST:

Deputy City Clerk

PUBLISH: Thursday, _____, 20____



Date: Monday, October 19, 2020

To: Honorable Mayor and City Council

From: Janie Higgins, Accounting Specialist , Accounting Specialist,
Jonathan Spendlove, Planning & Zoning Director

ACTION ITEM

Request:

Request to approve Ordinance #2020-017 for changes to Title 3 Business Regulations - Chapter 18 Commercial Vending.

Time Estimate:

Approximately ten (10) minutes for staff presentation with questions to follow.

Background:

In August of 2019, City Staff received approval to invest time into evaluating, amending and rewriting chapters of Title 3: Business Regulations.

On April 13, 2020 Staff presented a draft of the changes to the City Council. During that meeting, the Council brought up a few concerns, and directed staff to move quicker with this particular Chapter in order to accommodate the growing desire of the business community for these services.

On May 18, 2020 Staff presented a revised draft to City Council following the direction given in April. At the conclusion of the discussion, City Council voted 7-0 in favor of drafting an ordinance to finalize the changes to Title 3 Chapter 18.

Approval Process:

If Council wishes to pass the ordinance during this meeting, it would require a motion and successful vote to suspend the rules and place this ordinance on third and final reading by title only.

Budget Impact:

NA

Regulatory Impact:

Passing this ordinance will change the rules by which commercial vendors operate within City Limits.

History:

N/A

Analysis:

The three largest/impactful changes to Title 3 Chapter 18, are as follows:

All "vending" is to be treated the same. Selling hamburgers/hotdogs, pizza's, snow cones, blankets, easter eggs, flags, etc., will all be treated the same. Regulation by the product being sold became cumbersome and confusing. Simplifying the businesses down to simply Commercial Vending allowed for regulations to apply to a broad spectrum of businesses and makes an even playing field for all businesses.

All Commercial Vendors shall be required to get a license if they set up in City Limits. Including during special events.

Locations of vendors has increased. Vendors on private property located in Commercial Districts are allowed to operate wherever is best for their operations, with some limits for safety reasons. Vehicle Vendors are also now allowed to operate on public streets (except on Main Ave between Jerome and Fairfield), as long as they abide by parking, and traffic laws.

There are numerous other changes that are proposed, these are the top 3 requested changes made by the vendors and City Staff.

Conclusion:

Staff has drafted the ordinance as directed by Council and is now presenting it for Final Action by the Council.

Attachments:

1. City Council 2020 May 18, Minutes
2. 2020 Commercial Vending 3-18 - Repeal and Replace



Twin Falls City Council Minutes

Monday, May 18, 2020, 5:00 PM

City Council Chambers
203 Main Avenue East- Twin Falls, Idaho

1) CALL MEETING TO ORDER/CONFIRMATION OF QUORUM

Present: Mayor Suzanne Hawkins, Vice Mayor Ruth Pierce, Council Member Shawn Barigar, Craig Hawkins, Greg Lanting, Christopher Reid & Nikki Boyd.

Absent:

Staff Present: City Manager Travis Rothweiler, Deputy City Manager Mitch Humble, City Attorney Shayne Nope, Public Works Director Jon Caton, Staff Engineer Erin Steel, Aquatics Director John Pauley, P&Z Director Jonathan Spendlove, Accounting Specialist Janie Higgins, Desktop Technician Jeremiah Parent, Finance Administrative Assistant Amy Luna.

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

2) PLEDGE OF ALLEGIANCE

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

3) PROCLAMATIONS: None

4) CONSENT CALENDAR

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

- a) **ACTION ITEM:** Request to approve the Accounts Payable for May 7-13, 2020.
- b) **ACTION ITEM:** Request to approve the May 11, 2020, City Council Minutes.
- c) **ACTION ITEM:** Request to accept the Improvement Agreement for the purpose of developing Pheasant Meadows Subdivision No. 3.
- d) **ACTION ITEM:** Request to approve a Trust Agreement for Pheasant Meadows Subdivision No. 3, placing all lots in trust.
- e) **ACTION ITEM:** Request to approve the Final Plat for Wilcox Building Condominium to allow for the subdivision of a building into 3 units located at 710 Fillmore Street. c/o Chris Street Harper Leavitt Engineering, Inc. (PZ20-0052)
- f) **ACTION ITEM:** Request from the Twin Fall School District to waive building permit fees for construction of a wrestling facility at Twin Falls High School.
- g) **ACTION ITEM:** Request to approve the 2020 Downtown Farmer's Market.

5) ITEMS OF CONSIDERATION

- a) **PRESENTATION:** Presentation by Joshua W. Kern M.D., Vice President of Medical Affairs, St. Luke's Health System.

Mayor Hawkins introduced Dr. Kern, Vice President of Medical Affairs, St. Luke's Health System.

Discussion ensued on the following:

Mayor Hawkins: Someone who has a family member go into the hospital, when will a family member be able to go with them?

Council Member Barigar: Employers are asking about testing, what protocols are being used for testing?

Mayor Hawkins: If you have been exposed but do not have enough virus to test positive do you have enough virus to get someone else sick?

Mayor Hawkins thanked Dr. Kern for his presentation.

- b) **ACTION ITEM:** Request to award a contract for Zone 8 GSB-Friction Seal ®.
Public Works Director Caton requested to award a contract for Zone 8 GSB-Friction Seal.

Contract amount: \$694,000.00

Discussion ensued on the following:

Council Member Boyd: Has the crack seal been done all over? Or is this in preparation for this Friction Seal.

MOTION: **Council Member Reid** moved to approve the request to award a contract for Zone 8 to GSB-Friction Seal in the amount of \$694,000. **Council Member Boyd** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

- c) **ACTION ITEM:** Request to award the City of Twin Falls 2020 School Sidewalk Project to Extreme Excavation, Inc. of Twin Falls, in the amount of \$454,751.50.
Staff Engineer Steel requested to award the City of Twin Falls 2020 School Sidewalk Project to Extreme Excavation, Inc. of Twin Falls, in the amount of \$454,751.50.

Mayor Hawkins recused herself from this item as Extreme Excavation is a customer of her computer business.

Discussion ensued on the following:

Council Member Barigar: What is the timeline for construction?

MOTION: **Council Member Lanting** moved to approve the request to award the City of Twin Falls 2020 School Sidewalk Project to Extreme Excavation, Inc. of Twin Falls, in the amount of \$454,751.50. **Council Member Hawkins** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 6 to 0 with Mayor Hawkins abstaining.

- d) **ACTION ITEM:** Request to change appropriated capital dollars to purchase a new pool vacuum for the City Pool.
Aquatics Director Pauley requested to change appropriated capital dollars to purchase a new pool vacuum for the City Pool.

Discussion ensued on the following:

Council Member Hawkins: What is the life expectancy of the vacuum?

MOTION: **Council Member Boyd** moved to approve the request to change appropriated capital dollars to purchase a new pool vacuum for the City Pool. **Vice Mayor Pierce** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

- e) **ACTION ITEM:** Request to use contingency funds to convert the City Pool showers and sinks from geothermal water to city water.
Aquatics Director Pauley requested to use contingency funds to convert the City Pool showers and sinks from geothermal water to city water.

Discussion ensued on the following:

Council Member Reid: Do you think that this project will be completed before we reopen?

MOTION: **Council Member Reid** moved to approve the request to use contingency funds to convert the City Pool showers and sinks from geothermal water to city water. **Vice Mayor Pierce** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

Mayor Hawkins asked for a quick overview of the re-opening of the pool from **Aquatics Director Pauley**.

- f) **ACTION ITEM:** Request to adopt an ordinance for a Zoning District Change with a Zoning Development Agreement for the Twin Falls County West to rezone from C1 & CRO ZDA for property located at 630 Addison Avenue West. (PZ 19-0167)
P&Z Director Spendlove requested to adopt an ordinance for a Zoning District Change with a Zoning Development Agreement for the Twin Falls County West to rezone from C1 & CRO ZDA for property located at 630 Addison Avenue West. (PZ 19-0167).

Discussion ensued on the following:

Vice Mayor Pierce: What exactly changed?

MOTION: Council Member Boyd made a motion to suspend the rules and place Ordinance #2020-009 on third and final reading by title only under suspension of the rules. **Council Member Lanting** seconded the motion. Roll call vote showed all members present voted in favor of the motion. Approved 7 to 0

MOTION: Vice Mayor Pierce moved to approve **Ordinance #2020-009** for a Zoning District Change with a Zoning Development Agreement for the Twin Falls County West to rezone from C1 & CRO ZDA for property located at 630 Addison Avenue West (PZ 19-0167). **Council Member Boyd** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

- g) **ACTION ITEM:** Request to adopt an ordinance for a Zoning District Change with a Zoning Development Agreement for Bach Investments, LLC to rezone from C-1 PUD to C-1 CRO ZDA for property located west of and adjacent to Canyon Crest Drive, north of Pole Line Road aka Westpark Commercial No. 11 a PUD. c/o Tim Vawser on behalf of Bach Investments, LLC. (PZ20-0001)
P&Z Director Spendlove requested to adopt an ordinance for a Zoning District Change with a Zoning Development Agreement for Bach Investments, LLC to rezone from C-1 PUD to C-1 CRO ZDA for property located west of and adjacent to Canyon Crest Drive, north of Pole Line Road aka Westpark Commercial No. 11 a PUD. c/o Tim Vawser on behalf of Bach Investments, LLC. (PZ20-0001)

Discussion ensued on the following: None

MOTION: Council Member Lanting made a motion to suspend the rules and place Ordinance #2020-010 on third and final reading by title only under suspension of the rules. **Vice Mayor Pierce** seconded the motion. Roll call vote showed all members present voted in favor of the motion. Approved 7 to 0

MOTION: Council Member Lanting moved to approve the request to adopt an **Ordinance #2020-010** for a Zoning District Change with a Zoning Development Agreement for Bach Investments, LLC to rezone from C-1 PUD to C-1 CRO ZDA for property located west of and adjacent to Canyon Crest Drive, north of Pole Line Road aka Westpark Commercial No. 11 a PUD. c/o Tim Vawser on behalf of Bach Investments, LLC. (PZ20-0001). **Vice Mayor Pierce** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

- h) **ACTION ITEM**: Review of proposed changes to Title 3 Business Regulations - Chapter 18 Commercial Vending.
P&Z Director Spendlove & Accounting Specialist Higgins presented proposed changes to Title 3 Business Regulations - Chapter 18 Commercial Vending.

Discussion ensued on the following:

Council Member Hawkins: Asked about meeting with some vendors during this process.

Vice Mayor Pierce: Spoke in favor of the "Ice Cream Trucks" being a part of the Solicitor Section of the City Code. Would there be any exceptions to the Solicitor Section?

Mayor Hawkins: How long does it take and how much does it cost to get the Solicitors License?

Council Member Boyd: Asked about Commercial Vendor License Fees?

Mayor Hawkins: Asked what needs to be done with this Chapter tonight.

Council Member Hawkins: Where does the Farmer's Market fit into this?

Mayor Hawkins: What is the time frame for this Code change?

City Manager Rothweiler: Explained the time frame and steps going forward.

Mayor Hawkins: Voiced concern regarding the Farmers Markets.

Council Member Hawkins: Spoke in favor of this Code change but expressed concern with taking away freedoms.

Council Member Barigar: Spoke in favor of this Code change.

MOTION: Council Member Barigar moved to direct staff to go forward with drafting an Ordinance for changes to Title 3 Business Regulations - Chapter 18 Commercial Vending. **Council Member Reid** seconded the motion. Roll call vote showed all members present voted in favor of the motion. 7 to 0.

- 6) **GENERAL PUBLIC INPUT: To provide public input to the City Council please send to:**
Citizeninput@tfid.org

7) **ADVISORY BOARD REPORT/ANNOUNCEMENTS**

City Engineer Holtzen spoke about a road project within the City of Twin Falls that will close west bound traffic on Addison starting this week.

Vice Mayor Pierce: Asked about notifying the Citizens and businesses

Council Member Reid: Asked if the businesses know about this project or will it be a surprise? Believes that businesses should be given at least a week notification.

Council Member Hawkins: Asked about the direction of traffic that will be closed.

Council Member Barigar: Spoke in favor of the work around routes for this project.

City Manager Rothweiler spoke about the process and willingness to work with the contractor on this project.

City Council Meeting for May 26, 2020 has been cancelled. Next meeting will be at 4:00 pm on June 1, 2020.

Discussed the process of re-opening of the City.

- 8) **PUBLIC HEARINGS: None**

9) **ADJOURNMENT**

The meeting adjourned at 06:22 PM

ORDINANCE NO. 2020-017_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AMENDING TWIN FALLS CITY CODE BY REPEALING AND REPLACING CHAPTER 18 OF TITLE 3, CLARIFYING THE PROCESS TO OBTAIN AND MAINTAIN A TEMPORARY BUSINESS LICENSE, SPECIFICALLY FOR COMMERCIAL VENDING.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Section 1: That Twin Falls City Code Section Chapter 18 of Title 3: COMMERCIAL VENDING is repealed and replaced by a New Chapter 18, clarifying the process to obtain and maintain a temporary business license, specifically for commercial vending.

“Chapter 18 COMMERCIAL VENDING

3-18-1: Purpose: The creation and intent of this chapter is to promote and ensure the public health, safety, and welfare of the residents and visitors of the City of Twin Falls. Specifically, this chapter provides proper regulations and best practices for operating and maintaining a safe, clean, and appealing temporary business operation within the City.

3-18-2: DEFINITIONS:

The following words are defined as follows for this chapter only:

ADJOINING PROPERTY: Any property immediately adjacent to the *Vending Area*, as measured from the right-of-way centerline towards shall be the dividing line in determining adjacency.

COMMERCIAL VENDING: Peddling, vending, selling, displaying, or offering an item or items for sale from a temporary location. “Parking Lot Sales” approved per Twin Falls City Code, and temporary children’s vending stands are excluded from this definition.

DISCHARGE LOCATION: The location where graywater/wastewater from the Vending Cart/Vehicle is taken to for discharge or treatment.

FOOD PREPARATION AREA: Any area or location where food is prepared for human consumption.

PRIVATE PROPERTY VENDING: *Commercial Vending* where all aspects of the activity take place on property that is not *Public Property*.

PUBLIC PROPERTY: Parks, parking lots, rights of way, and sidewalks owned or maintained by the State of Idaho, the City of Twin Falls, or any political subdivision thereof.

SIDEWALK VENDING: *Commercial Vending* from a Vending Cart or Vending Area to persons on the public right-of-way, any sidewalk, or pedestrian access.

STREET VENDING: *Commercial Vending* from a Vending Vehicle situated on the public right-of-way between the curb lines, or edges of pavement, to persons within the right-of-way or the public sidewalk.

VENDING AREA: Any area used or anticipated to be used for *Commercial Vending*, including preparation, display, transactions, customer queuing, customer seating areas, and other associated activities.

VENDING CART: A movable push-cart that is operated by a vendor standing on public property.

VENDING VEHICLE: A vehicle operated by a vendor standing on or within the frame of the vehicle.

3-18-3: LICENSE REQUIRED

It is unlawful for any Commercial Vendor, or licensee, agent, or employee of that Vendor to operate in an unauthorized location; without a City license; without a valid health department permit; and/or in violation of health department regulations. A violator of any section of this chapter may be subject to criminal prosecution, revocation of the license, and/or denial of a future license for a period of up to three (3) years.

3-18-4 GENERAL REGULATIONS

- (A) Exclusive Rights: No Commercial Vendor shall have exclusive right to any location on *Public Property*. Special Event Permits, or any other permit issued by the City, for the use of any *Public Property* will take precedence for the duration of the Event, or time, associated with the use of *Public Property*.
- (B) Location and Site Restrictions
 1. Commercial Vending is prohibited within fifty (50) feet of Residential Uses, unless otherwise permitted within this City Code.
 2. Commercial Vending activities are prohibited in any congested area where their operations might impede or inconvenience the public
 3. Commercial Vending activities are prohibited on Public Property adjacent to Main Avenue between Fairfield Street and Idaho Street, unless approved through the Special Event Permit Process.
 4. Commercial Vending activities **shall not be** located in the following areas:
 - a. Where clear pedestrian passage on the public sidewalk is five (5) feet wide or less;
 - b. Crosswalk areas;
 - c. Within the clear vision triangle area (TFCC 9-9-16) on corners of intersections, alleyways or driveways;
 - d. Within ten (10) feet of any doorway, except that this distance may be decreased to five (5) feet with written consent of property owner or agent of the affected permanent business or residence.
 - e. In any area which obstructs the movement or visibility of vehicles or bicycles using the appropriate public right-of-way, access easement, or drive aisle.
 - f. Within five (5) feet of utility boxes and/or vaults, handicap ramps, emergency call boxes, or fire hydrants
 - g. Within any area that impedes, endangers, or interferes with pedestrian or vehicular traffic.
 5. Unless otherwise provided in this chapter, or through a Special Event Permit obtained

under Twin Falls City Code, *Vending Areas* shall be spaced a minimum of ten (10) feet apart.

6. Vendors shall not use or attach any items to public amenities (trees, street lights, street furniture, railings, etc.) for any reason, without prior authorization.
7. The area within twenty-five (25) feet of the *Vending Area* shall be kept free of discarded beverages, debris, food, and trash at all times.
8. All food vendors shall operate in such a manner that prevents the spilling or splattering of grease, water, food, or trash on any *Public Property*. The food vendor shall be responsible for the cleaning and/or repair of any *Public Property* which is soiled, stained, or damaged by the placement or operation of the commercial vending business.

(C) Operating Hours and other Time Limitations:

1. Permitted operating hours shall be between 7:00 AM and 10:00 PM.
 - a. Commercial Vendors associated with Special Event Permits may be open for the approved hours of the event.
 - b. Commercial Vendors on private property may be open for the approved hours of the primary business, including locations with extended hours approved through the Special Use Permit Process.
2. No *Vending Area* shall be unattended for more than fifteen (15) consecutive minutes.
3. All items associated with *Commercial Vending* shall be removed from *Public Property* when not in operation. Special Event Permit holders may request for this requirement to be waived during multi-day events.

(D) General Operation Restrictions and Requirements:

1. Each person or entity intending to engage in *Commercial Vending* shall submit a site plan and/or declaration of operation location meeting the requirements of a license application provided by the City Clerk.
2. Drive-thru operations shall not be permitted.
3. City water and sewer service connections are not permitted.
4. Audio amplification of any kind is prohibited, unless otherwise permitted within this City Code.
5. Overhead electrical lines are not permitted. Electrical lines shall not lay across any pedestrian access portion of the sidewalk. Any permanent electrical fixtures shall be approved prior to use by the City Electrical Inspector.
6. Each *Food Preparation Area* shall be required to contain a fire extinguisher approved by the Fire Marshal.
7. Each *Vending Cart/Vehicle* containing a *Food Preparation Area* shall provide a discharge location approvable by the City Engineer.
8. Commercial Vendors shall display, in a readily visible location, the following items at all times when in operation:
 - a. City License
 - b. Health Permit,
 - c. "Open Sign" no smaller than 4x6 inches and no larger than 12x12 inches.
9. Signage: Vendors may receive a permit for one (1) temporary sign, with a maximum size of four (4) square feet. Temporary signage shall be wholly located within the *Vending Area*. All other signage is subject to regulations found in Title 10.
10. The dumping of any ice, trash, gray or wastewater, or any other items associated with *Commercial Vending*, into public waste receptacles, private dumpsters, public planter boxes, gutters, or the street is prohibited without prior authorization from the City or private property owner.

11. Each *Commercial Vendor* shall provide proof of liability insurance in the minimum amount of five hundred thousand dollars (\$500,000.00), with expiration no less than one (1) year from the date of application approval, and shall agree in writing to hold the City harmless from any injury or damage resulting from the operation of the *Commercial Vending* operation. Additionally, each *Commercial Vendor* shall carry workers' compensation insurance as required under Idaho law.
12. The use of any tent, structure, or building, whether permanent or temporary, may require separate licenses or permits from a separate authority (i.e. tents over 400 square feet require a tent permit from the Fire Department).

3-18-5 COMMERCIAL VENDING ON PUBLIC PROPERTY

The following regulations apply to all *Commercial Vending* operations which take place on *Public Property*.

- (A) Each Commercial Vendor operating on *Public Property* shall receive written permission from the appropriate governing authority. For *Public Property* owned by the City of Twin Falls, the City Manager or its designee shall make decisions on authorization.
- (B) Each Commercial Vendor operating on *Public Property* shall carry a Commercial General Liability Policy naming the City as an additional insured entity for any damage to public property. The policy shall be in the minimum amount of five hundred thousand dollars (\$500,000.00). Expiration shall be no less than one (1) year from the date of application approval.
 1. If the damage exceeds this amount the City may use any and all means to collect the amount needed to clean, repair, or replace the damaged property.
- (C) In addition to the general regulations set forth in CC 3-18-4, the following regulations shall also apply:
 1. *Sidewalk and Street Vending*.
 - a. Each *Commercial Vending* operation shall obtain written consent of each adjoining property owner or agent of the owner (business manager, property manager) prior to operation.
 2. *Street Vending*:
 - a. *Vending Vehicles* shall follow all traffic regulations, including but not limited to: speed limits, parking locations, parking time limits, obstructing traffic, and noise limitations.
 - b. *Vending Vehicles* shall carry additional Insurance coverage for the vehicle in case of accident or damage to property. The Policy shall be in the minimum amount of five hundred thousand dollars (\$500,000). Expiration shall be no less than one (1) year from the date of application approval.

3-18-6: COMMERCIAL VENDING ON PRIVATE PROPERTY:

Commercial Vendors may operate on private property under the following conditions and are subject to the following standards:

- (A) *Commercial Vending* on private property is not permitted in residential zones, or on residential property.
- (B) Each applicant intending to establish a *Private Property Vending* operation shall provide to the City written permission from the property owner or authorized agent prior to beginning operation.

3-18-7: LICENSE ISSUANCE PROCESS

All Licenses shall be issued on an annual basis. Application for such License shall be made upon a form supplied by the City Clerk. The City Clerk shall charge the appropriate fee identified on the City Fee Schedule.

Licenses shall be issued or denied within ten (10) business days after receipt of a complete application.

3-18-8: LICENSE REVOCATION PROCESS:

Any public safety officer, city licensing officer, or other city staff member authorized by the City Manager is authorized to enforce this ordinance.

Prior to the revocation or denial of any license, or renewal thereof, written notice of the reason(s) therefor shall be served on the applicant or licensee in person or by certified mail at the address on the license application. Revocation shall become final within ten (10) days of service unless the applicant or licensee appeals the action to the City Council. The applicant or licensee shall make his appeal in writing to the City Council within ten (10) days of receipt of the notice.

Should the applicant or licensee request an appeal within such ten (10) day period, the applicant shall be notified in writing by the City Clerk of the time and place of the public meeting where the appeal will be heard. Should an emergency exist that constitutes an immediate danger to life or health, a License may be summarily revoked pending the notice and public meeting herein provided."

PASSED BY THE CITY COUNCIL, _____.

SIGNED BY THE MAYOR, _____.

MAYOR

ATTEST:

DEPUTY CITY CLERK

PUBLISHED: _____



Date: Monday, October 19, 2020

To: Honorable Mayor and City Council

From: Jon Caton, Public Works Director, Public Works Director, Mark Thomson, Senior Supervisor , Streets Superintenden

ACTION ITEM

Request:

Request to purchase a John Deere 672G motor grader with 6WD for \$237,439.70 using a Cooperative Purchasing Agreement with Sourcewell.

Time Estimate:

Presentation will take approximately 5 minutes. Staff recommends allowing a few minutes for any questions.

Background:

On December 9, 2019, City Council adopted a resolution authorizing staff to use cooperative purchasing agreements and join cooperative purchasing programs. City staff can approve purchases up to the informal bid limits. If the purchase will be greater than the informal bid limit (\$100,000), city council must approve the purchase. Please see attached copy of the adopted Resolution 2019-014.

In this case, Sourcewell has secured a bid in the amount of \$312,439.70 for a John Deere 672G motor grader. After our trade in value of \$75,000.00 is subtracted out total is \$237,439.70. The City attorney has reviewed and believes Sourcewell is a cooperative program authorized to be utilized by Idaho Code 67-2807. The Street Department is requesting council approve the purchase of the motor grader. \$237,500.00 was budgeted for the replacement of this piece of equipment.

Approval Process:

Requires Council Approval

Budget Impact:

\$237,500.00 was budgeted for the replacement of this piece of equipment. It will be taken out of our of Capital equipment line item

Regulatory Impact:

Council approval is required to make a purchase over \$100,000 using a Cooperative Purchasing agreement. Approval will allow staff to purchase a new motor grader

History:

Analysis:

Conclusion:

Staff recommends council approve this request.

Attachments:

1. Sourcewell ordinance document
2. Streets20201008084419.doc

RESOLUTION NO. 2019-014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO AUTHORIZING THE CITY OF TWIN FALLS TO PARTICIPATE IN COOPERATIVE PURCHASING AGREEMENTS AND PROGRAMS; AND AUTHORIZING CERTAIN CITY OFFICIALS TO ENTER INTO, JOIN, AND APPROVE EXPENDITURES PERTAINING TO COOPERATIVE PURCHASING AGREEMENTS AND PROGRAMS.

WHEREAS, Idaho Code §§ 67-2807 authorizes Idaho cities to participate in cooperative purchasing agreements with the state of Idaho, other Idaho political subdivisions, and other government entities; and,

WHEREAS, Idaho Code §§ 67-2807 authorizes Idaho cities to participate in cooperative purchasing programs established by any association that offers its goods or services as a result of competitive solicitation process; and,

WHEREAS, participation in cooperative purchasing agreements or programs requires approval by the City Council; and,

WHEREAS, the State of Idaho determines the value, in terms of dollars, at which an informal bidding process will be followed; and,

WHEREAS, certain city officials are authorized to approve informal bids on behalf of the City of Twin Falls; and,

WHEREAS, the City Manager has requested authorization to allow these same city officials to enter into cooperative purchasing agreements and programs, and to approve expenditures not to exceed the maximum value, in terms of dollars, set by the State of Idaho for the informal bidding process.

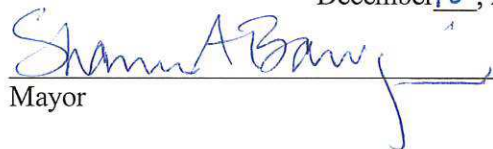
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Section 1: That those individuals who are authorized to approve informal bids on behalf of the City of Twin Falls are authorized to enter into cooperative purchasing agreements and join cooperative purchasing programs that offer goods or services as a result of competitive solicitation.

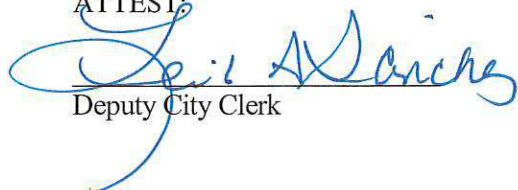
Section 2: That those individuals who are authorized to approve informal bids on behalf of the City of Twin Falls are authorized to approve expenditures as part of a cooperative purchasing agreement or cooperative purchasing program up to, but not to exceed, the maximum amount set by the State of Idaho for the informal bidding process.

PASSED BY THE CITY COUNCIL
SIGNED BY THE MAYOR

December 9, 2019.
December 10, 2019.


Mayor

ATTEST:


Deputy City Clerk

Quote Id: 22907546

Prepared For:
CITY OF TWIN FALLS STREET DEPT

Prepared By: **TERRY DROWN**

Coastline Equipment Company
26 E 300 S
Jerome, ID 83338

Tel: 208-324-2900

Mobile Phone: 208-539-2336

Fax: 208-324-3212

Email: terry.drown@coastlineequipment.com

Offer Expires: 28 October 2020

Confidential

Quote Id: 22907546

CITY OF TWIN FALLS STREET DEPT
PO BOX 1907
TWIN FALLS, ID 83303

We would like to take this opportunity to thank you for your recent interest in John Deere machinery.

It has been a pleasure serving you, and it is our hope that we may continue to assist you with your equipment needs now and in the future. Please be sure to call on us whenever we can be of further service. We will always do everything possible to merit the confidence you have shown in our company and the products we represent.
This quote is a Source well price.

Sincerely,

TERRY DROWN
208-324-2900
Coastline Equipment Company

Quote Summary**Prepared For:**CITY OF TWIN FALLS STREET DEPT
PO BOX 1907
TWIN FALLS, ID 83303**Prepared By:**TERRY DROWN
Coastline Equipment Company
26 E 300 S
Jerome, ID 83338
Phone: 208-324-2900
Mobile: 208-539-2336
terry.drown@coas tlineequipment.com

Quote Id: 22907546**Expiration Date:** 28 October2020

Equipment Summary	Suggested List	Selling Price	Qty	Extended
JOHN DEERE 672G MOTOR GRADER with 6WD	\$ 499,894.00	\$ 312,439.70 X	1 =	\$ 312,439.70
John Deere Extended Warranty-5 year 5000 pt hyd		\$ 0.00 X	1 =	\$ 0.00

Equipment Total **\$ 312,439.70**

Trade In Summary	Qty	Each	Extended
2010 JOHN DEERE 672GP - 1DW672GPVA0629212	1	\$75,000.00	\$ 75,000.00
PayOff			\$ 0.00
Total Trade Allowance			\$ 75,000.00

Trade In Total **\$ 75,000.00****Quote Summary**

Equipment Total	\$ 312,439.70
Trade In	\$ (75,000.00)
SubTotal	\$ 237,439.70
Total	\$ 237,439.70
Balance Due	\$ 237,439.70

Salesperson : X_____**Accepted By : X**_____

Selling Equipment

Quote Id: 22907546

Customer: CITY OF TWIN FALLS STREET DEPT

JOHN DEERE 672G MOTOR GRADER with 6WD**Hours:****Suggested List****Stock Number:**

\$ 499,894.00

Code	Description	Qty
8450T	672G MOTOR GRADER with 6WD	1
Standard Options - Per Unit		
170C	JDLink Ultimate - 5 Year Subscription	1
1020	Armrest Fingertip Controls	1
1140	John Deere PowerTech PSS 9.0L meets EPA FT4 Emissions	1
1235	130 amp Alternator	1
1320	No Quick Service Group	1
1410	Standard Fuel & Water Filtration	1
1610	Hydraulic Pump Disconnect	1
1830	Engine Exhaust W/ Flat Black Stack (FT4 or Stage V only)	1
1910	Blade Impact Absorption System	1
2020	12 Ft. x 24 In. x 7/8 In. (3.66M x 610mm x 22mm) w/ 8 In. x 3/4 In. (203 x 19mm) Cutting Edge & 5/8 in. (16mm) Hardware	1
2575	No Grade Control Base Kit Installed	1
2605	English Manual W/ English Labels & Decals	1
2775	No Topcon 3D GPS Grade Control System installed	1
2820	Single Input Gearbox with Slip Clutch	1
4916	No Brand Preference	1
5060	Grade Pro Low Cab w/ Lower Front and Side Opening Windows	1
5510	Autoshift Transmission	1
5710	Transmission Solenoid Valve Guard	1
5815	Hydrau	1
6030	No Powered Cab Air Precleaner	1
6140	Grade Pro Premium Heated, Leather/ Fabric, High-Wide Back Air Suspension Seat	1
6585	Grade Pro Controls w/1 Front Auxiliary Function AND 1 Rear Auxiliary Function	1
6650	Grade Pro Controls - Left Side	1
6720	Front Scarifier	1

Selling Equipment

Quote Id: 22907546

Customer: CITY OF TWIN FALLS STREET DEPT

6830	Rear Hitch and Pin	1
7110	Transporting Lights (6 Halogen Lights)	1
7820	No Front Fenders	1
8110	24-to-12 Volt Converter (15 amps peak/ 10 amps continuous)	1
8210	Exterior Mounted Rearview Mirrors	1
8310	Lower Front Intermittent Wiper & Washer	1
8410	AM/FM Radio with Aux and Weather Band (WB)	1
8510	Air Conditioner Refrigerant Charged	1
8730	No Sound Absorption Package	1
8830	Rear Camera (R4)	1
9130	Rear Retractable Sun Shade	1
9220	5.0 lbs. multi purpose (ABC) Dry Chemical Fire Extinguisher	1
9290	Flip Down Cab Beacon Bracket (RH)	1
9360	Engine Block Heater	1
9370	Ether Starting Aid	1
9450	Reversible Overlay End Bits	1
9716	14.0R24 G2/L2 1 STAR SNOW NO BRAND PREFERRED WITH 3PC RIM	1
Service Agreements		
	John Deere Extended Warranty - 5 year 5000 pt hyd	
Other Charges		
	Freight	1
	Setup	1

Trade In

Quote Id: 22907546

Customer: CITY OF TWIN FALLS STREET DEPT

Machine Details	
2010 JOHN DEERE 672GP SN# 1DW672GPVA0629212	
Description	Net Trade Value
2010 JOHN DEERE 672GP	\$75,000.00
SN# 1DW672GPVA0629212	
Your Trade In Description	
672GP	
Original Description	
Hour Meter Reading	
3300	

Original Factory Build Codes	
Code	Description
9170	REAR CAMERA
9190	CONVERTER 24/12V 25AMP
2230	CIRCLE INST-NYLN/BRNZ SD W/CL
9180	RADIO AM/FM/WB WITH CD
9140	CAB LWR FT INT WIPER/WASHER
9290	RH FLIP DOWN BEACON BRACKET
9280	SMV SIGN WITH BRACKET
6560	EH FRT CONTROL VALVE W 1 AUX
9220	FIRE EXTINGUISHER
5060	EH LOW CAB W/ WINDOWS
1410	STANDARD FUEL LINES
1220	ALTERNATOR 130 AMP
1700	JDLINK ULTIMATE(W/SIM1) N.A.
6140	PREM POST/CONT FAB EH CNTRLs
5520	NO AUTOSHIFT TRANSMISSION
9350	HYDR PUMP DISCONNECT
6030	NO CAB PRECLEANER
2030	12' X 27" X 1" MB (8" CE)
9070	CIRCLE DRIVE SLIP CLUTCH

Trade In

Quote Id: 22907546

Customer: CITY OF TWIN FALLS STREET DEPT

7160	DLX LIGHTING PKG W/HAL +SXTR
6830	REAR HITCH AND PIN
9545	TRANS SOLENOID VALVE GUARD
9610	BLADE IMPACT ABSORPTION
1020	ELECTRO HYDRAULIC CONTROLS
1120	9.0L ENG,EPA TR3/STG3A CERT
7520	1400 CCA BATTERY
4411	14R24 G2 1* MICH 1PC RIM
6650	EH PLACE HOLDER
9370	ETHER AID - LESS CANISTER
6720	FRONT MOUNTED SCARIFIER
9360	HEATER ENG COOLANT



Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Jason Brown, Environmental Engineer, Environmental Engineer

ACTION ITEM

Request:

Request to approve the CH2M/Jacobs Yearly Contract Amendment.

Time Estimate:

5 Minutes

Background:

The contract with CH2M/Jacobs is being updated to reflect the new contract and budgeted price. This Amendment #7 is amending the yearly contracted price for services provide at the wastewater treatment plant. During the budgeting process an adjustment to the contracted prices was approved. This Amendment #7 is finalizing the contract for the FY20-21 for operational services at the WWTP.

Approval Process:

Council approves the Mayor to sign Amendment #7 with CH2M/Jacobs for the operation of the WWTP.

Budget Impact:

The budgeted amount for the service contract for FY20-21 is \$3,104,313.00.

Regulatory Impact:

Item has been budgeted in FY20-21 for the amount of \$3,104,313.00.

History:

N/A

Analysis:

N/A

Conclusion:

As part of the Agreement for operational service with CH2M/Jacobs, nd Amendment to the contract is requested. Staff is asking that Council approve Amendment #7 and allow the Mayor to sign.

Attachments:

1. Amendment #7 2020

**AMENDMENT NO. 7
to the
AGREEMENT FOR OPERATIONS
MAINTENANCE AND MANAGEMENT SERVICES
for the
CITY OF TWIN FALLS, IDAHO**

This Amendment No. 7 (the "Amendment") is made and entered into this ____ day of _____, 2020 (the "Effective Date") between the City of Twin Falls, Idaho (hereinafter "Twin Falls") and Operations Management International, Inc. (hereinafter "CH2M HILL"), who may be referenced herein individually as a "Party" and collectively, as the "Parties."

WHEREAS, the Parties entered into the Agreement for Operations, Maintenance and Management Services for the City of Twin Falls, Idaho Wastewater Treatment Facility, Pump Stations and UASB, on June 11, 2014 with an effective date of October 1, 2014 (the "Agreement").

WHEREAS, the Parties now wish to further modify the Agreement as more fully set forth herein.

NOW THEREFORE, Twin Falls and CH2M HILL agree to amend the Agreement as follows:

1. Article 4.1 shall be deleted in its entirety and replaced with the following:
 - 4.1 Twin Falls shall pay CH2M HILL as compensation for services performed under this Agreement a Base Fee, which shall be equal to the Direct Costs plus the Management Fee for the period of October 1st through September 30th of each year of this Agreement. CH2M HILL shall propose a Base Fee by July 1st of each year of this Agreement and the Parties shall mutually agree on any proposed Base Fee prior to such fee taking effect. For period of October 1, 2020 to September 30, 2021, the estimated Base Fee shall be Three Million One Hundred Four Thousand Three Hundred Thirteen Dollars (\$3,104,313). Subsequent years' Base Fees shall be determined as specified in Article 4.4.
2. Article 4.2 shall be deleted in its entirety and replaced with the following:
 - 4.2 The estimated Direct Cost for providing services during the time period of October 1, 2020 through September 30, 2021 shall be Two Million Five Hundred Eighty-Six Thousand Nine Hundred Twenty-Seven Dollars (\$2,586,927). If the actual Direct Cost is less than the estimated Direct Cost for the contract year currently in effect then CH2M HILL will rebate Twin Falls One Hundred Percent (100%) of the difference between the actual and estimated Direct Costs plus the management fee associated with those costs.

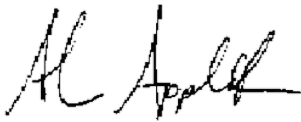
This Amendment constitutes the entire agreement between the Parties and supersedes all prior oral and written understandings with respect to the subject matter set forth herein. Unless specifically stated all other terms and conditions of the Agreement shall remain in full force and

effect. Neither this Amendment nor the Agreement may be modified except in writing signed by an authorized representative of the Parties.

The Parties, intending to be legally bound, indicate their approval of the Amendment by their signatures below.

Authorized Signature:

**OPERATIONS MANAGEMENT
INTERNATIONAL, INC.**



Name: Andrew Appleton

Title: Vice President

Date: 9/17/2020

Authorized Signature:

CITY OF TWIN FALLS, IDAHO

Name: Suzanne Hawkins

Title: Mayor

Date: _____



Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Jason Brown, Environmental Engineer, Environmental Engineer

ACTION ITEM

Request:

Request to authorize the Mayor to sign the IDWR Flood Management Grant Agreement.

Time Estimate:

10 Minutes

Background:

The Southern Idaho Water Quality Coalition (SIWQC) was formed in 2018 to engage a broader spectrum of area land and water users to identify, manage, and increase awareness for water quality issues, projects, and partnerships benefiting the Mid-Snake River and related water bodies.

The City of Twin Falls was one of the initial members of the coalition and continues to be an active leader in the group. Our interests are to encourage comprehensive water quality improvement projects and to partner with other organizations that have the same desire for water quality improvements. As a membership, the SIWQC applied for a Bureau of Reclamation WaterSmart Watershed Management Program Grant and received notification of award in 2019. This grant is intended to construct sediment and phosphorus removal ponds near Auger Falls and the O Coulee near the intersection of 2700 E and Addison Ave. W. These projects are similar to other water quality pond projects the City has been apart of in the past. It helps with the removal of sediment and phosphorus from irrigation returns before entering the Snake River.

On Monday, April 6, 2020 the City Council approved entering into a Memorandum of Agreement with SIWQC and the Twin Falls Canal Company (TFCC). The MOA helped provide a mechanism for the City and TFCC to support the execution of the WaterSmart Grant and complete the water quality projects. As part of the MOA, the City agreed to allocate \$200,824.00 toward the completion of the project.

In addition to the WaterSmart Grant, the City and TFCC applied for a Idaho Department of Water Resource Flood Management Grant. An IDWR Flood Management Grant of \$50,962.00 was awarded jointly to the City and TFCC to complete construction of the O Coulee ponds, which will help facilitate water quality and flood control improvements.

Staff is asking that Council approve the IDWR Flood Management Grant Contract and authorize the Mayor to sign the agreement.

Approval Process:

The City Council authorizes the Mayor to sign the Flood Management Grant Contract (Contract No. CON01497).

Budget Impact:

No budgetary impacts. The Flood Management Grant money can also be used a matching contributions to the WaterSmart Grant. Money that was approved in the April 6, 2020 council meeting for the WaterSmart Grant will be used as as the City's contributions for both grants.

Regulatory Impact:

None

History:

N/A

Analysis:

N/A

Conclusion:

Staff is asking for City Council authorize the Mayor to sign the Flood Management Grant Contract.

Attachments:

1. CON01497 - TFCC-City of Twin Falls

FLOOD MANAGEMENT GRANT CONTRACT

CONTRACT NO. CON01497

This Contract is made by and between the Idaho Water Resource Board (Board), Twin Falls Canal Company and City of Twin Falls (Sponsors), and is made in reference to the following facts:

RECITALS

- A. House Bill 646 passed and approved by the 2020 legislature transferred \$1,000,000 from the General Fund to the Water Management Fund, which is administered by the Board. Of the \$1,000,000 funding appropriation, \$800,000 is dedicated to the Board's Flood Management Grant Program for 2020.
- B. House Bill 646 allows for the award of grants larger than \$50,000, prioritizes projects on a competitive statewide basis, and directs the Board to require fifty-percent (50%) matching funds for all projects.
- C. In June 2020, the Sponsors submitted a flood management grant funding request of \$50,962.00 to build seven acres of wetlands to help reduce the impacts from flood events.
- D. Board staff determined that Sponsors' application complied with the intent of the Board's Flood Management Grant Program, that the costs are reasonable, and there are other funds to match the Board's contribution.
- E. On July 30, 2020, the Board approved a \$50,962.00 flood management grant to the Sponsors.

The parties agree as follows:

1. PROJECT COORDINATION

- A. The Board's Contract Manager shall be Neeley Miller. He shall be the Board's representative for administration of this Contract.
- B. The Sponsors' Project Coordinators and representatives for the administration of this Contract shall be Brian Olmstead for Twin Falls Canal Company and Jason Brown for City of Twin Falls

2. SCOPE OF WORK

- A. The Sponsors shall perform the tasks described in the project proposal attached as Attachment B and incorporated by this reference (the Project).
- B. The Sponsors shall be responsible for coordinating with all regulatory agencies and jurisdictions, and obtaining the required approvals and permitting to complete the Project.
- C. The funding award will be reallocated if work for the proposed flood management project has not commenced prior to November 1, 2020.

- D. At the completion of the Project, the Sponsors shall submit to the Board a final project report which shall include construction diaries and materials sampling and testing results.
- E. Sponsors shall submit to the Board a certificate of completion, stating that the Project was constructed in substantial conformance with the plans and specifications.

3. INSPECTIONS BY THE BOARD

At the end of the Project, the Board's Contract Manager may inspect and review the work for compliance with the Scope of Work and terms of the Contract.

4. COMPENSATION AND PAYMENTS

- A. This is a cost reimbursement not to exceed Contract where the Board has approved grant funding of fifty thousand nine hundred sixty-two dollars and zero cents (\$50,962.00). The total cost of the completed project is \$101,924.00. Sponsors shall be responsible for the remaining project costs (\$50,962.00).
- B. Sponsors shall submit monthly invoices to IDWR Payable, PO Box 83720, Boise, ID 83720-0098 or email idwrpayable@idwr.idaho.gov. The following information must be included on the invoice:
 - a. Billing date
 - b. Sponsor's name, address, and telephone number
 - c. Contract number
 - d. Timeframe covered by the invoice
 - e. Itemized activities performed during the billing period
 - f. Total amount being billed for the billing period
- C. Board staff shall review the invoices and upon approval, make payment within 30 calendar days.
- D. A 5% retainage amount will be withheld from each cost reimbursement request until the final report and certificate of completion for the project is submitted to the Board. The final cost reimbursement request shall include the total retainage amount for the project.
- E. Funding for the project will not be disbursed until the project is fully permitted. However, if portions of the project can be completed without a permit, funds may be disbursed at the discretion of the Board's Contract Manager.

5. TERM

This Contract shall take effect when all parties have signed it. The date of this Contract will be the date the Contract is signed by the last party to sign it and shall continue in effect for one year from the date of execution.

6. GENERAL TERMS AND CONDITIONS

The Sponsors shall abide by all applicable terms and conditions contained in Standard Contract Provisions, Idaho Water Resource Board, attached as Attachment A and incorporated by this

reference. For purposes of this Contract, references to Contractor in the Standard Contract Provisions apply to the Sponsor.

7. TRIPLICATE ORIGINAL

This Contract is executed in triplicate. Each of the three documents with an original signature of each party shall be an original.

The parties have executed this Contract on the date following their respective signatures.

IDAHO WATER RESOURCE BOARD
322 E Front Street
PO Box 83720
Boise, ID 83720-0098

TWIN FALLS CANAL COMPANY
PO Box 326
Twin Falls, ID 83301

Brian Patton
Executive Officer



Brian Olmstead
Manager

Date



Date

CITY OF TWIN FALLS
PO Box 1907
Twin Falls, ID 83301

Suzanne Hawkins
Mayor

Date

Attachment A

STANDARD CONTRACT PROVISIONS IDAHO WATER RESOURCE BOARD

I. DEFINITIONS

- A. “Board” or “IWRB” shall mean the Idaho Water Resource Board, 322 East Front Street, PO Box 83720, Boise, Idaho 83720-0098, by and through its authorized representatives.
- B. “Contract Manager” shall mean that person appointed by the Board to administer this Contract on behalf of the Board and includes, except as otherwise provided in this Contract, an authorized representative of the Contract Manager acting within the limits of his authority.
- C. “Project Coordinator” shall mean that person appointed by the Contractor to administer this Contract on behalf of the Contractor and includes, except as otherwise provided in this Contract, an authorized representative of the Project Coordinator acting within the limits of his authority.

II. PROJECT COORDINATION

- A. All communications given to the Contract Manager or Project Coordinator shall be as binding as if given to the party.
- B. The Board, or anyone authorized to act on its behalf, may change the Contract Manager at any time by written notice served on the Contractor.
- C. The Project Coordinator shall be the Contractor’s representative for administration of this Contract and shall have full authority to act on behalf of the Contractor unless specified otherwise in the main body of the Contract. The Contractor may change its Project Coordinator by prior written notice served on the Board.

III. LIMITATION OF PROGRAM FUNDS

- A. The Contractor acknowledges that the Board cannot obligate funds prior to obtaining funding approval.
- B. The Board certifies that state or federal funds are presently available and authorized for expenditure to pay the portion of costs which will accrue during the current state or federal fiscal year or applicable grant period.
- C. The Contractor agrees that all obligations of the Board, including the continuance of payments under this Contract, are contingent upon the availability and continued appropriation of funds. In the event state or federal funds become unavailable as determined by the Board, the Board may immediately terminate this Contract or amend it accordingly. In no event shall the Board be liable for any payments in excess of approved or appropriated funds available for this project.

IV. TERMINATION FOR CONVENIENCE

- A. The Board may terminate for its convenience this Contract in whole or in part. In such event, the Board shall serve a written Notice of Termination for Convenience on the Contractor by deposit in the United States mail, as certified, return receipt requested with proper postage affixed. Notice of Termination for Convenience shall be deemed served upon its receipt.
- B. The Contractor shall not incur after the date of service of the Notice of Termination for Convenience any non-cancellable obligations, except as authorized in the written Notice of Termination for Convenience.
- C. If a termination for the convenience of the Board is effected, an equitable adjustment in the payments authorized in this Contract shall be made. Such adjustments shall provide for payment to the Contractor for services rendered prior to the effective date of termination of the Contract and for all non-cancellable obligations incurred prior to receipt of a Notice of Termination for Convenience.
- D. Within twenty (20) days of receipt of a Notice of Termination for Convenience, the Contractor shall submit a summary detailing all completed work on service required by this Contract.

V. TERMINATION FOR DEFAULT

- A. In addition to any termination of this Contract in accordance with Section IV, the Board may terminate this Contract in whole or in part because of the failure of the Contractor to fulfill its obligations if Contractor fails to cure such default after notice and a period to cure. Upon receipt of Notice of Termination for Default, the Contractor shall immediately discontinue all services affected. Oral notice of termination by the Board is effective when given, but in such a case, the Board shall confirm with written Notice of Termination for Default by deposit in the United States mail as certified, return receipt requested. The effective date of termination for default if no oral notice is given shall be the date of receipt of Notice of Termination for Default.
- B. If a termination for default is effected, an equitable adjustment in the payments authorized in this Contract shall be made. Such adjustments shall provide for payment to the Contractor for services rendered prior to the effective date of termination of the Contract and for all non-cancellable obligations incurred prior to receipt of a Notice of Termination for Default.
- C. The rights and remedies of the Board provided in this Contract are in addition to any other rights and remedies provided by law or under this Contract.

VI. INDEMNIFICATION

- A. Contractor shall indemnify, defend, and save harmless the Board, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of,

or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule.

- B. Upon receipt of the Board's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the Board, to begin fulfilling its obligation to indemnify, defend, and save harmless the Board. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the Board under this Contract. However, if it is determined by a final judgment that the Board's negligent act or omission is the sole proximate cause of a suit or claim, the Board shall not be entitled to indemnification from Contractor with respect to such suit or claim, and the Board, in its discretion, may reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to Section VI.C.
- C. Any legal defense provided by Contractor to the Board under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the Board is necessary. Any attorney appointed to represent the Board must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code §§ 67-1401(13) and 67-1409(1).

VII. NO PERSONAL LIABILITY

Contractor specifically understands and agrees that in no event shall any official, officer, employee, or agent of the Board and the State of Idaho be personally liable for any representation, statement, covenant, warranty, or obligation contained in, or made in connection with, this Contract, express or implied.

VIII. TAXES

The Contractor, with respect to its employees and those of its subcontractors, if any, shall pay, indemnify and hold the Board and the State of Idaho harmless from the payment of all taxes and contributions imposed by federal and state laws, including social security taxes, with respect to said employees and their remunerations, including all interest and penalties payable under said laws as the result of noncompliance therewith.

IX. WORKERS COMPENSATION INSURANCE

Unless the Contractor is exempt under the provisions of Idaho Code § 72-212, the Contractor warrants that it has purchased worker's compensation insurance for Contractor and all employees engaged in the performance of this Contract and shall provide the Board with a Certificate of Insurance to verify the same within 15 days of the execution of this Contract. The Contractor shall notify the Contract Manager within five (5) days of any change in the status of its worker's compensation insurance.

X. INSURANCE

- A. Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of the Contract with insurance companies properly licensed to do business in Idaho. The Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. Contractor shall provide a copy of the carrier's notice of cancellation or material changes within two days of the Contractor receiving notice from the carrier. All insurance, except for Workers Compensation and Professional Liability/Errors and Omissions, shall name the Board and the State of Idaho as Additional Insured.
- B. Contractor shall maintain insurance in amounts not less than the following:
 - 1. Commercial General Liability (CGL) with a limit of not less than \$1,000,000 each occurrence, and \$2,000,000 annual aggregate, if defense is inside the limits. If defense is outside the limits, the limit must be \$2,000,000 each occurrence and \$4,000,000 aggregate.
 - 2. Automobile Liability including owned, non-owned, leased, and hired liability with a limit of not less than \$1,000,000 each accident and \$1,000,000 aggregate.
 - 3. Professional liability insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000 or the equivalent. Annual aggregate limit shall not be less than \$1,000,000.

XI. RELATIONSHIP OF THE PARTIES

- A. The parties intend to create by the terms of this Contract, an independent contractor relationship between the Board and the Contractor.
- B. The parties do not intend to create by the terms of this Contract the relationship of employer and employee. Contractor's status under this Contract shall be that of an independent contractor and not that of an agent or employee of the State. Contractor shall be responsible for paying all employment-related taxes and benefits, such as federal and state income tax withholding, social security contributions, worker's compensation, and unemployment insurance premiums, health and life insurance premiums, pension contributions, and similar items. Contractor shall indemnify the Board and the State and hold them harmless from any and all claims for taxes (including but not limited to social security taxes), penalties, attorneys' fees, and costs that may be made or assessed against the State arising out of Contractor's failure to pay such taxes, fees or contributions.

XII. ASSIGNMENT OF BENEFITS AND DELEGATION OF DUTIES

- A. The Contractor shall not delegate any duties under this Contract or assign any benefits, including any moneys due or to become due hereunder, without the prior written consent of the Board.

- B. In the event a delegation of duties or an assignment of benefits is approved by the Board, the Contractor shall remain responsible and agrees to bind every such delegate or assignee to comply with the terms and conditions of this Contract.

XIII. WAIVER, MODIFICATION OR AMENDMENT

No waiver, modification, or amendment of this Contract or of any covenants, conditions, or limitations herein contained shall be valid unless in writing and executed by both parties. The parties further agree that the provisions of this section may not be waived, modified, or amended except as herein set forth.

XIV. PUBLIC RECORDS

Pursuant to Idaho Code § 74-101, et seq., information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate each portion as “exempt” on each page of such documents and shall indicate the basis for such exemption. The Board will not accept the marking of an entire document as exempt. In addition, the Board will not accept a legend or statement on one page that all, or substantially all, of the document is exempt from disclosure. The Contractor shall indemnify and defend the Board against all liability, claims, damages, losses, expenses, actions, attorneys’ fees, and suits whatsoever for honoring such a designation or for the Contractor’s failure to designate individual documents as exempt. The Contractor’s failure to designate as exempt any document or portion of a document that is released by the Board shall constitute a complete waiver of any and all claims for damages caused by any such release.

XV. RIGHTS IN DATA

- A. The Contractor agrees that all data, plans, drawings, specifications, reports, operating manuals, notes, and other written documents produced in the performance of this Contract or in contemplation thereof, are owned by and are for the exclusive use of the Board and are subject to the rights of the Board set forth in this section.
- B. The Board shall have the right to reproduce, publish, and use all such documents or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so.
- C. The Board agrees to identify the Contractor or designate appropriate authorship on all materials reproduced and published that are a direct product of the work performed under this Contract.

XVI. RETENTION OF RECORDS AND ACCESS TO FACILITIES, PREMISES, AND RECORDS

- A. The Contractor shall establish and maintain project budget accounts and records for work and services required by this Contract in accordance with generally accepted accounting principles and practices. Records shall be retained by the Contractor throughout the term of this Contract and for a period of three (3) years following final settlement.
- B. At all reasonable times during the term of this Contract and for a period of three (3) years following final settlement, the Board, State of Idaho, and their authorized representatives shall

have access at the Contractor's offices to its records related to the services performed under this Contract for the purposes of inspection, audit, and copying by the Board, State of Idaho, and their authorized representatives.

XVII. FORCE MAJEURE

Neither party shall be liable for or deemed to be in default for any delay or failure to perform under this Contract if such delay or failure to perform results from an act of God, civil or military authority, act of war, riot, insurrection, or other occurrence beyond that party's control. In such case, the intervening cause must not be caused by the party asserting it, and the excused party is obligated to promptly perform in accordance with the terms of this Contract after the intervening cause ceases.

XVIII. ILLEGAL ALIENS

Contractor warrants it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and, that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach of this Contract and shall be cause for termination.

XIX. ENTIRE AGREEMENT

This Contract sets forth all the covenants, provisions, agreements, conditions, and understandings between the parties, and there are no covenants, provisions, agreements, conditions or understandings, oral or written, between them other than are herein set forth.

XX. SEVERABILITY

If any part of this Contract is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.

XXI. SURVIVAL

All covenants, conditions, indemnifications, and other elements in this Contract that might involve performance subsequent to any termination or expiration of this Contract or that cannot be reasonably ascertained or fully performed until after termination or expiration of this Contract shall survive. Survival of such terms shall not extend in violation of Article VII, Section 11 of the Idaho Constitution and Idaho Code §§ 59-1015 through 59-1017.

XXII. NO WAIVER

The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract be construed as or deemed to be a waiver of any subsequent breach or default.

XXIII. EFFECT OF SECTION HEADINGS

The section headings appearing in this Contract are not to be construed as interpretations of the text but are inserted for convenience and reference only.

XXIV. SOVEREIGN IMMUNITY

Nothing contained in this Contract shall be considered a waiver of the State's sovereign immunity, which immunity is expressly reserved.

XXV. GOVERNING LAW

This Contract shall be governed as to validity, construction, and performance by the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Ada County in the state of Idaho. The venue of any action brought by any parties to this Contract shall be in a State of Idaho District Court.

XXVI. NOTICES

All notices shall be in writing and sent certified mail, postage prepaid, return receipt requested to:

Idaho Water Resource Board
Attn: Purchasing Agent
PO Box 83720
Boise, ID 83720-0098

Alvin Allen / O Coulee Wetland Project

Twin Falls Canal Company delivers irrigation water to 200,000 acres in Twin Falls County. TFCC has over 5,000 concrete measurement and delivery structures that provide water primarily to farmers, but also to the cities of Kimberly, Twin Falls, Filer and Buhl, and to numerous industrial users, subdivisions, golf courses, hobby farms and ranchettes. The City of Twin Falls is the county seat of Twin Falls County and is the largest water shareholder in the Twin Falls Canal Company System. TFCC delivers irrigation water to 25 pressure irrigation systems operated by the City to serve their urban customers.

Over the past 20 years, TFCC and the City of Twin Fall have partnered on numerous water quality and irrigation projects. This flood management project will be another opportunity for the two organizations to partner once again. This project will be located in and adjacent to the O-Coulee which is a major natural drainage coulee for about 3,000 acres of farmland on the western edge of the City of Twin Falls. After leaving the O-Coulee wetland, the water travels roughly 3/8 of a mile through a commercial development property which is the locations of one of the regional construction companies, a concrete mixing plant, and a local landscaping company. After flowing through this commercial development area, the O-Coulee then flows into Rock Creek located in the middle of the Twin Falls County Rock Creek Park. Rock Creek then flows into the Snake River approximately 5 miles to the north of this project.

This coulee has a history of occasional flooding during both summer thunderstorm events and wintertime frozen ground rain and snowmelt events. These occasional floods have caused considerable property damage several times to the downstream businesses, and have produced extreme short term pollutant run-off into Rock Creek. The retention and spreading out of flows by this 7 acre project will moderate and buffer flash flood damage from summer thunderstorm events, and because it can be drained of irrigation water in the winter time, it will be able to capture several hours of a winter run-off flood and then regulate the quantity of flooding downstream.

In addition to the flood moderation and prevention properties of this project, it will also result in a large improvement in the water quality flowing downstream into Rock Creek and the Middle Snake River. Because of these water quality benefits, The Southern Idaho Water Quality Coalition has also been approved for a Water Smart Grant from the Bureau of Reclamation for construction of this project. We hope that the Water Smart Federal Money will provide a portion of the match that we will need to construct the project. This will be very important in helping Rock Creek and the Snake River attain the Clean Water Act Total Maximum Daily Load (TMDL) water quality targets that up to this point have not been consistently achieved.

The O-Coulee drain has historically returned high levels of sediment and phosphorous where it returns to Rock Creek. In 2005, a 319 water quality project was built just upstream of this project and it removes approximately 40% of the pollutant loads. Our experience with several similar wetlands that TFCC has constructed over the past 15 years predicts that this wetland will raise that removal efficiency up to about 90% on the Sediment and to about 60% of phosphorous. This project will keep approximately 1,000 tons per year of sediment and associated nutrients from discharging into Rock Creek and the Mid-Snake River.

This wetland is not designed to be a recharge facility, but slowing the return flows down and spreading it over 7 acres will improve incidental recharge to the Twin Falls local aquifer which has been in a slow decline over many years.

ATTACHMENT B

Another benefit this project will provide is more scenic entrance into the City of Twin Falls for visitors entering from the West on Highway 30. Highway 30 has been a gateway into Twin Falls for years, and has needed something to help improve the entrance. It has history been used for commercial business such as automobile salvage yards, gravel operations, and concrete plants on both sides of the road. The 7 acres of wetlands will create an aesthetically pleasing entrance into Twin Falls and provide new habitat for waterfowl and other wildlife.

Thank you for your consideration of this important project.

Brian Olmstead
TFCC, Manager

A handwritten signature in black ink, reading "Brian Olmstead", written over a horizontal line.

Jason Brown
City of Twin Falls, Environmental Engineer

A handwritten signature in blue ink, reading "J. Brown", written over a horizontal line.

ALVIN ALLEN WETLAND BUDGET ESTIMATE

This Pond/Wetland Complex will be designed and constructed by TFCC crews using equipment owned, or rented, by TFCC. All the dirt and rock will be from our TFCC stockpiles. Concrete structures will be designed and built by TFCC concrete crews. Culverts and pipelines will be bid and purchased from local suppliers.

- Excavation, hauling and placing of
18,500 cubic yards of soil @ \$3/yd----- \$55,500
- Hauling and placing of 700 cubic
Yards of rock and gravel @\$6/yd ----- \$4,200
- Building and installing 10 precast concrete
Check structures @\$1,500 each -----\$15,000
- Building on-site one large concrete
Diversion structures at \$8,000 each-----\$8,000
- Purchase and installation of
2500 ft of 12" 100 PSI PVC pipe @ \$6/ft-----\$15,000
- Purchase and installation of 80 ft
Of 24" CMP pipe @ \$21.55/ft -----\$1,724
- Administration and project
Management by TFCC staff-----\$2,500

TOTAL Project Cost-----\$101,924

** I can break this budget down into wages for each employee, cost per hour of each piece of equipment, etc. if necessary. We feel that \$/ unit of material moved and placed is a more efficient and accurate estimate** ... Brian Olmstead

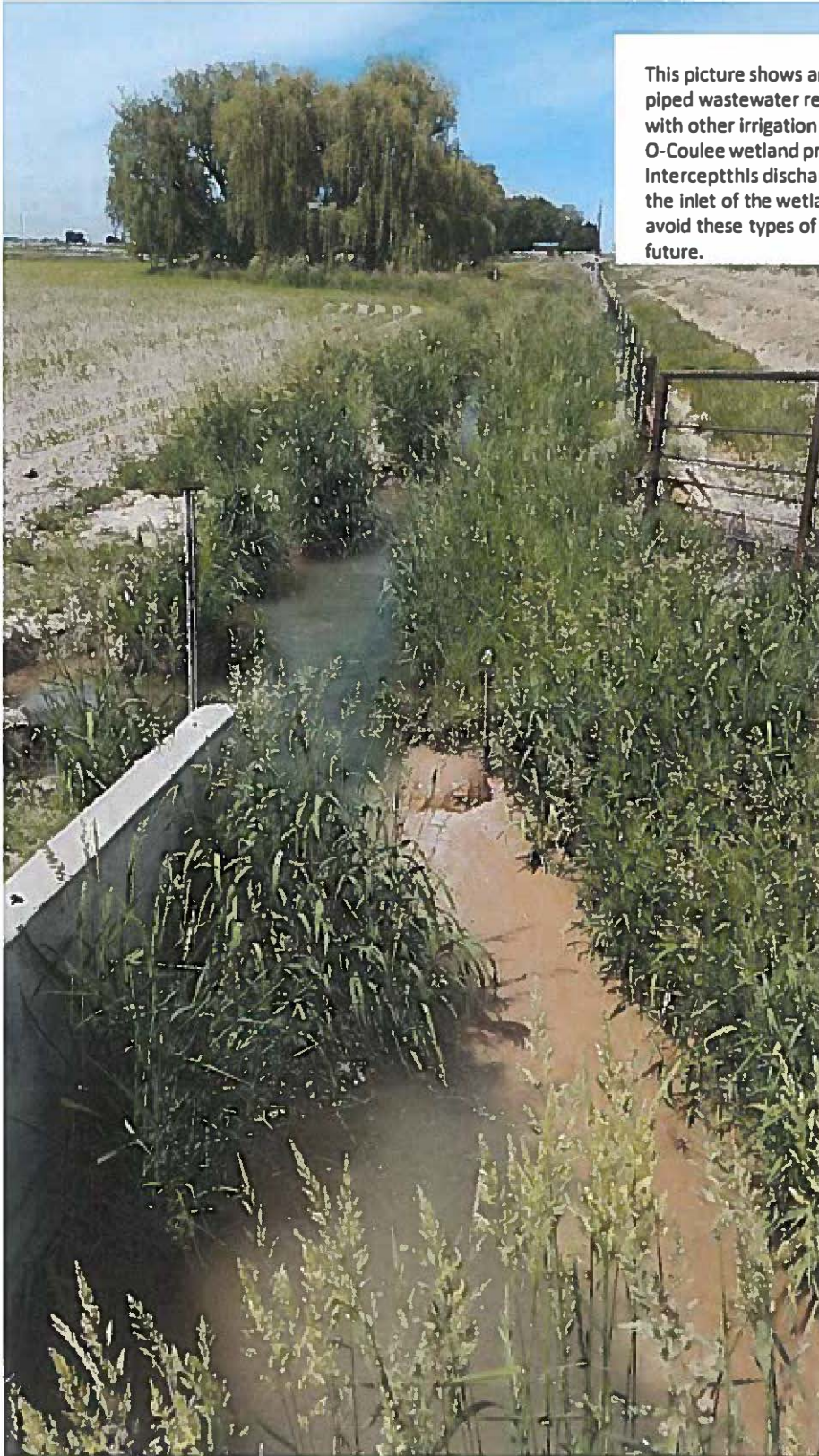
ATTACHMENT B







ATTACHMENT B



This picture shows an input from a piped wastewater return associated with other irrigation applications. The O-Coulee wetland project will intercept this discharge and reroute to the inlet of the wetland system to avoid these types of discharges in the future.



ATTACHMENT B





Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Jason Brown, Environmental Engineer, Environmental Engineer

ACTION ITEM

Request:

Request to approve a Resolution #2020-017 to update the City of Twin Falls Industrial Pretreatment Enforcement Response Plan.

Time Estimate:

10 Minutes

Background:

On July 15, 2020 the Idaho Department of Environmental Quality (IDEQ) conducted a pretreatment program audit of the City of Twin Falls industrial pretreatment program. One of the issues identified in DEQ's report was the City's Industrial Pretreatment Enforcement Response Plan (ERP). DEQ has requested that the City specify the title of the City Personnel responsible for the enforcement responses in Table 1 of the ERP. This update helps the City better comply with state and federal regulations.

Approval Process:

City Council approval allows City staff to continue implementing the City's Enforcement Response Plan and update the ERP at the request of IDEQ.

Budget Impact:

None

Regulatory Impact:

The revision to the ERP helps the City comply with state and federal regulations.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the City Council approve the resolution and the revised ERP. This allows staff to continue implementation of the City's pretreatment program.

Attachments:

1. 2020 Industrial Enforcement Response Plan Resolution_FINAL

RESOLUTION NO. 2020-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
TWIN FALLS, IDAHO, UPDATING THE INDUSTRIAL
ENFORCEMENT RESPONSE PLAN, REPEALING AND
REPLACING RESOLUTION R-2018-005.

WHEREAS, on April 30, 2018, the City Council adopted a new Industrial Enforcement Response Plan and Industrial User Surcharge Program SOP via Resolution R-2018-005, with an effective date of October 1, 2018; and,

WHEREAS, on June 17, 2019, the City Council adopted a new Industrial User Surcharging Program SOP via Resolution R-2019-007; and,

WHEREAS, the Industrial Enforcement Response Plan needs to be updated (Specifying which city personnel is responsible for the enforcement response in Table 1 of the Enforcement Response Plan. These changes are at the request of the Idaho Department of Environmental Quality Pretreatment Audit on July 15, 2020.), however, there are no changes to the Industrial User Surcharge Program SOP.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR
AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

Section 1: That Resolution R-2018-005 is repealed; and,

Section 2: That the Industrial User Enforcement Response Plan (changed and modified as noted), attached hereto as Exhibit “A”, and the Industrial User Surcharge Program SOP (no changes or modifications) for the City of Twin Falls Industrial Pretreatment Program, attached hereto as Exhibit “B”, are hereby adopted for the City of Twin Falls, Idaho with and effective date of November 1, 2020.

PASSED BY THE CITY COUNCIL: October ___, 2020.

SIGNED BY THE MAYOR: October ___, 2020.

MAYOR

ATTEST:

DEPUTY CITY CLERK

ENFORCEMENT RESPONSE PLAN

CITY OF TWIN FALLS

INDUSTRIAL PRETREATMENT PROGRAM



Jacobs

The City of Twin Falls is required under federal guidelines contained in 40 CFR Part 403 to implement and maintain an Enforcement Response Plan (ERP). The ERP ensures that the City of Twin Falls is achieving compliance with respect to the Clean Water Act (CWA), General Pretreatment Regulations (40 CFR Part 403), and the City of Twin Falls Wastewater Treatment Plant's NPDES permit (ID-002127-0).

Background

In 1972, Congress enacted the Clean Water Act (CWA). The CWA established requirements for federal, State, and local agencies to control the discharge of pollutants to surface waters of the United States. The National Pollution Discharge Elimination System (NPDES) program was instituted to control point-source discharges to surface waters, including those of wastewater treatment plants.

In 1978, the EPA promulgated The General Pretreatment Regulations (40 CFR Part 403) and has continued to update and revise these regulations to reflect current knowledge of water quality issues, best management practices, and treatment technologies. These Regulations govern the discharge of pollutants to Publicly Owned Treatment Works (POTWs) from any non-domestic source regulated under §307(b), (c) or (d) of the CWA (i.e. industrial users) and provide municipalities (as defined in CWA § 502(4)) with the legal authority to implement and enforce the National Pretreatment Program.

All POTWs collect wastewater from homes, commercial buildings, and industrial facilities and transport it via a series of pipes, known as the collection system, to the treatment plant. Here, the POTW removes harmful organisms and other contaminants from the wastewater so it can be discharged safely into a receiving body of water. Generally, POTWs are designed to treat only domestic wastewater. However, POTWs also receive wastewater discharges from non-domestic users, which are regulated by 40 CFR Part 403. The purpose of these regulations is to control pollutants from industrial user discharges that may cause pass through or interfere with the POTW's treatment process or that may contaminate treated bio solids.

In general terms, the City of Twin Falls Pretreatment program consists of identifying industrial users (IUs) that are subject to federal regulations (*and - by extension – State regulations and local limits*), issuing such users Industrial Wastewater Discharge Permits, and enforcing noncompliance and/or violations of these permits.

Through its EPA-Approved Industrial Pretreatment Program, The City of Twin Falls is committed to demonstrating compliance with the CWA and the General Pretreatment Regulations, as well as its own NPDES permit (ID-002127-0), while also working with industrial users to provide service in a business-friendly, environmentally responsible manner.

The general Pretreatment Regulations identify specific requirements that apply to all non-domestic (i.e. industrial) sources of wastewater discharge to a POTW. Additionally, there are requirements that apply to all Significant Industrial Users (SIUs)¹ and certain requirements that apply only to Categorical Industrial Users (CIUs).²

¹ As defined in 40 CFR 403.3(v)

² As defined in 40 CFR 403.3 (v)(i)

The objectives of the National Pretreatment Program are achieved by applying and enforcing both discharge standards and pretreatment standards. The general and specific prohibited discharge standards are contained in the National Pretreatment Standards: Prohibited Discharges (40 CFR 403.5), and the pretreatment standards are contained in: the Categorical Pretreatment Standards (40 CFR Parts 405-471), individual State requirements, and local discharge limitations (as per 40 CFR 403.5).

The requirement of a POTW to implement and maintain an enforcement response plan (ERP) is as follows (40 CFR 403.8(f)(5)):

The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- (i) Describe how the POTW will investigate instances of noncompliance;
- (ii) Describe the types of escalating enforcement response the POTW will take in response to all anticipated types of industrial user violations and the time periods within which response will take place;
- (iii) Identify (by title) the official(s) responsible for each type of response;
- (iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8 (f)(1) and (f)(2). (403.8(f)(5))

This enforcement response plan establishes the process for ensuring full compliance with all provisions of the local sewer use ordinance and industrial wastewater discharge permits. The remedies provided in this Enforcement Response Plan are not all-inclusive. The City may take any, all, or any combination of these actions against a non-compliant person or user. The City may take other actions against any person or user when the circumstances warrant. Furthermore, the City is empowered to take more than one enforcement action against any non-compliant person or user.

The ERP provides guidelines on how the City of Twin Falls (Control Authority) will investigate and respond to instances of Industrial User (IU) noncompliance. The ERP provides guidance as to the range of enforcement responses, including types of violations and time frames for actions and follow-up. The ERP also provides references to the legal authority (sewer use ordinance) used to carry out the enforcement responses. The Control Authority has the primary responsibility to enforce the local sewer use ordinance. The ERP has been developed in accordance with 40 CFR 403.8(f)(5) and EPA guidelines as presented in *Guidance for Developing Control Authority Enforcement Response Plans* (EPA 1989).

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1. ENFORCEMENT PROCEDURES

The following section addresses the enforcement procedures for noncompliance. The range of enforcement actions available to the Control Authority is identified, along with the personnel responsible for the different levels of enforcement actions. Guidance on how to determine what enforcement action is appropriate is also provided.

1.1 COMPLIANCE INFORMATION DOCUMENTATION

The Control Authority shall endeavor to keep accurate records of all compliance information to ensure accurate and prompt enforcement responses. Records shall be kept of each enforcement action taken in response to evidence of noncompliance.

1.2 PROCEDURES TO SCREEN FOR NONCOMPLIANCE

Noncompliance is determined based on the Control Authority's sample monitoring, inspection monitoring, and evaluation of industry-generated compliance monitoring reports. Wastewater sampling and/or inspection monitoring can occur daily, weekly, monthly, quarterly, or semi-annually depending on the discharger's performance or other relevant requirements, such as those contained in the discharger's industrial waste discharge permit.

All sampling results and reports shall be reviewed for violations of local enforcement limits, applicable hazardous waste limits, and federal pretreatment standards as appropriate. Sampling results from a discharger's self-monitoring report (SMR) or the Control Authority's monitoring program are given to the Industrial Pretreatment Coordinator to review for violations, and the Industrial Pretreatment Coordinator initiates enforcement actions, as necessary.

1.3 PRETREATMENT PROGRAM STRUCTURE AND DUTIES

The City of Twin Falls' Pretreatment Program involves a partnership between the Control Authority (City of Twin Falls) and Jacobs (Contract Operator). In general terms, the Control Authority initiates formal enforcement actions, whereas the Contract Operator or Control Authority monitors SIU compliance with respect to Industrial Wastewater Discharge Permits, initiates informal enforcement actions in a timely manner, and recommends formal enforcement actions to the Control Authority. To achieve this, the Contract Operator's Industrial Pretreatment Coordinator performs the following:

- Reviews Control Authority sampling results and/or SIU self-monitoring reports, identifying discharge violations.
- Initiates enforcement actions for noncompliance as delineated in the Enforcement Response Guide (ERG).
- Tracks SIU's responses to enforcement actions, compliance meetings, and compliance schedules.
- Reviews SIU's response letters to ensure the responses are adequate.
- In conjunction with the City, sets up compliance meetings using appropriate communications.
- Reviews and prepares IU compliance history reports.
- Prepares recommendations for: Notices of Violation, Administrative fines, Administrative Orders, and/or Judicial Action(s).

1.4 RANGE OF ENFORCEMENT ACTIONS

Enforcement responses range from an informal telephone call to judicial actions that include criminal charges. For many noncompliance episodes, the least severe enforcement action may be taken, which is

an informal telephone call and/or e-mail. If the discharger continues to be in noncompliance, or if noncompliance becomes significant, enforcement action will be escalated.

The range of enforcement actions available to the Control Authority is delineated below, in order of increasing severity, along with a list of the personnel that have signature authority for the enforcement action.

TABLE 1. ENFORCEMENT ACTIONS AND RESPONSIBLE PERSONNEL

Enforcement Action	Initiating Personnel	Signature Authority
Corrective Notice: Informal action including telephone calls, Control Authority-generated discharge monitoring reports, site visits, warning letters, and/or e-mail communications	Industrial Pretreatment Coordinator	Industrial Pretreatment Coordinator
Notice of Violation (NOV)	Industrial Pretreatment Coordinator	City Environmental Engineer
Administrative Order: Consent Order	City Environmental Engineer	City Engineer or City Manager
Administrative Order: Show Cause Hearing	City Environmental Engineer	City Engineer or City Manager
Administrative Order: Compliance Order	Industrial Pretreatment Coordinator	City Environmental Engineer
Administrative Order: Cease and Desist Order	Industrial Pretreatment Coordinator	City Environmental Engineer, City Engineer, or City Manager
Judicial Action	City Environmental Engineer	City Manager or City Attorney

A series of tables comprising an Enforcement Response Guide (ERG) is included within this ERP (see Section 2). The ERG is to be used to help Pretreatment Personnel determine the appropriate enforcement action that corresponds to the nature of the violation. The ERG shall serve as a minimum standard in determining enforcement responses.

As circumstances warrant, the Industrial Pretreatment Coordinator, or City Environmental or City Engineer may perform any enforcement action for which the Industrial Pretreatment Coordinator is responsible. The range of enforcement actions available are described below, listed in the approximate order of escalation.

1) **Corrective Notice/Informal Action** (e.g., telephone call, e-mail, Control Authority-generated discharge monitoring report, site visit or warning letter): Although these actions are informal, they are still documented and kept in the discharger's file. A warning letter encourages the discharger to enact corrective action prior to issuance of an NOV or implementation of progressively severe enforcement action. A warning letter shall indicate it is not a Notice of Violation. Informal Actions are normally performed by the Industrial Pretreatment Coordinator but may also be performed by the City Environmental or City Engineer.

2) **Notice of Violation**: This is an informal enforcement letter indicating in writing that it serves as a Notice of Violation (NOV) to the discharger. The NOV specifies the violation and requires some type of corrective action. The NOV is recommended by the Industrial Pretreatment Coordinator and authorized by the City Environmental Engineer.

3) **Administrative Order:** An administrative order is a formal enforcement document that requires the discharger to undertake or cease a specified activity and that requires compliance with pretreatment standards and requirements under the Twin Falls Municipal Code (Sewer Use Ordinance No. 2975). Administrative orders can include administrative penalties, compliance schedules and termination of service orders. Termination of water and or sewer service is an administrative response that can be implemented directly by the appropriate City Department. The four types of administrative orders used are a Consent Order, Show Cause Hearing, Compliance Order, and Cease and Desist Order.

a) A **Consent Order** is a formal agreement between the Control Authority and the discharger normally containing three elements: compliance schedules, stipulated fines or remedial actions and signatures of the Control Authority and industry representatives. The consent order is appropriate when the user accepts responsibility for its noncompliance and is willing to negotiate corrective actions in good faith. Examples of corrective actions that have been required under past Consent Orders include a compliance schedule, an engineering study of inflow and infiltration, and implementation of best management practices (BMPs).

b) A **Show Cause Hearing** is a formal request to appear before the Control Authority and “show cause” why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 15 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

c) A **Compliance Order** is a formal enforcement document that directs the discharger to achieve compliance according to specific actions (with specified due dates). The terms of a Compliance Order do not need to be discussed with the discharger. The Control Authority tracks the dischargers compliance with milestone dates set in the order.

d) A **Cease and Desist Order** is a formal enforcement document that directs the discharger to terminate illegal and/or authorized discharges immediately. This order is used when the discharge could threaten POTW operations, compliance or the environment. The order may be given immediately over the telephone, with a follow-up written order. The Control Authority has the authority to immediately halt any actual or threatened discharge to the treatment plant that may represent an endangerment to the public health, the environment, or the treatment plant, upon informal notification to the Industrial User. (Sewer Use Ordinance Section 7-7-9.5).

4) **Judicial Action:** Civil or criminal cases can be brought against the discharger. The Control Authority brings civil and criminal cases to the attention of the City Attorney. (Sewer Use Ordinance Section 7-7-10)

1.5 TYPES OF NONCOMPLIANCE

To ensure the enforcement action selected is appropriate to the violation, the Control Authority has divided noncompliance episodes into two types, noncompliance and significant noncompliance.

1.5.1 NONCOMPLIANCE

Most cases of noncompliance that are not significant are:

- 1) First time or infrequent violations of enforcement limits, reporting requirements, or other permit requirements that may be identified during an inspection, except violations that would constitute significant noncompliance as delineated below,
- 2) Minor deficiencies in the submittal of information or reports, which in and of themselves do not constitute significant noncompliance.

All cases of noncompliance that are not significant may be followed up by a telephone call, e-mail, site visit, warning letter, or NOV and documented to the SIU's file.

1.5.2 SIGNIFICANT NONCOMPLIANCE

At a minimum, and except as provided within the definition, one or more of the criteria listed in the definition for Significant Noncompliance shall constitute significant noncompliance (see **Table 7** and **Section 3, Definitions**) (40 CFR 403.8(f)(2)(viii)).

The Industrial Pretreatment Coordinator or Control Authority reviews violations that meet one or more of these criteria on a case-by-case basis. The Industrial Pretreatment Coordinator or Control Authority may determine that a violation, though technically meeting one of these criteria, did not meet the intent of the criteria. In such cases, the violation shall not be considered significant noncompliance, and the exception shall be noted.

The responsible personnel shall describe and document the reason why the violation did not meet the intent of the criteria in the discharger's Pretreatment Compliance Monitoring Correspondence and Enforcement file.

Dischargers who have been in Significant Noncompliance must be listed in the newspaper. The list must be published at least annually as required by 40 CFR 403.8(f)(2)(viii). EPA guidance indicates that the act of publishing a list of Significant Violators may be used by the POTWs as a deterrent to continued noncompliance (EPA 1989).

The list of dischargers who are in Significant Noncompliance is published in the *local newspaper with the largest circulation*. Federal regulations require the public notice to contain the names of significant violators and an accompanying statement regarding the violations during the previous twelve months (40 CFR 403.8(f)(2)(viii)). However, EPA states that the public notice may also include additional information such as duration of violation, type and severity of violation, compliance action taken (if any), whether the Industrial User is currently complying with a compliance schedule, and whether the Industrial User has returned to compliance (EPA 1989).

1.6 ADMINISTERING ENFORCEMENT ACTION

There are a number of factors to consider when selecting an enforcement action from the range of available enforcement actions. These factors include:

- **Magnitude of the violation.**
- **Duration of the violation.**
- **Effect of the violation on the receiving water.**
- **Effect of the violation on the POTW.**
- **Compliance history of the Industrial User.**
- **Good faith of the Industrial User.**

The Control Authority considers the above factors when deciding how stringent an enforcement action is warranted under recommendation of the Industrial Pretreatment Coordinator. It is important to be consistent when using these factors to determine the enforcement response for a noncompliance episode. More information on each of these factors is presented below.

1.6.1 MAGNITUDE OF THE VIOLATION

For a given category of violation, the Control Authority may need to decide if the violation constitutes Significant Noncompliance as defined in 40 CFR 403.8(f)(2)(viii) (see **Section 4 Definitions** and **Table 6**). It is recommended that the Control Authority respond to Significant Noncompliance “with an enforceable order that requires a return to compliance by a specific deadline” (EPA 1989).

An initial enforcement response for most instances of noncompliance will be a site visit, a telephone call, e-mail, or a warning letter that informs the discharger of the nature of the violation, the SUO section violation, and the consequence of a failure to correct the deficiency.

1.6.2 DURATION OF THE VIOLATION

Regardless of whether noncompliance is deemed significant, if the discharger does not respond to the initial enforcement response or continues to be in noncompliance, or if the violation continues over prolonged periods of time, an escalated enforcement action is taken.

1.6.3 EFFECT OF THE VIOLATION ON THE RECEIVING WATER OR BIOSOLIDS

Industrial User noncompliance might adversely affect receiving waters or the quality of the Biosolids. Environmental harm is presumed whenever an Industrial User discharges a pollutant into the collection system that:

- Passes through the POTW
- Causes interference with POTW processes
- Causes a violation of the POTW’s NPDES permit
- Has a toxic effect on the receiving waters
- Causes an exceedance in a Biosolids limit or otherwise limits its beneficial reuse

Such violations shall be addressed through formal enforcement action and penalties to ensure that adequate treatment and compliance is achieved promptly. In some cases, injunctive measures may also be appropriate.

1.6.4 EFFECT OF THE VIOLATION

Industrial User noncompliance might cause interference with treatment plant performance. Such violations shall be addressed through formal enforcement action and penalties to ensure that adequate treatment and compliance is achieved promptly. In some cases, injunctive measures may also be appropriate.

1.6.5 COMPLIANCE HISTORY OF THE INDUSTRIAL USER

More aggressive enforcement actions should normally be taken against facilities that frequently exceed numerical pretreatment standards than those that report isolated violations, unless the isolated violations are significant or troublesome when weighed using the factors delineated above under “*Types of Noncompliance*”. Informal review meetings or a written notice of violation should seek specific explanations of the cause of frequent exceedances. If inadequate operating practices are found to be the cause, the Industrial Pretreatment Coordinator and/or City Personnel should seek specific commitments

and deadlines to improve operating practices. If additional treatment is required, an enforceable compliance schedule should be issued to the industrial facility.

1.6.6 GOOD FAITH OF THE INDUSTRIAL USER

If Industrial User personnel appear to be attempting in good faith to comply with pretreatment requirements, enforcement actions should be on a more cooperative level than if Industrial User personnel do not appear to be attempting to comply in good faith. Staff responsible shall weigh the specific facts of the situation or acts performed by the Industrial User in determining whether the Industrial User is attempting to comply in good faith. In addition, Control Authority staff shall be aware that the CWA requires extraordinary efforts to comply with its requirements in a timely manner. Good faith shall be measured against this standard. Congress clearly expresses the efforts that are expected:

The Act requires industry to take extraordinary efforts if the vital and ambitious goals of the congress are to be met. This means that business-as-usual is not enough. Prompt, vigorous, and in many cases, expensive pollution control measures must be initiated and completed as promptly as possible. In assessing the good faith of a discharger, the discharger is to be judged against these criteria. Moreover, it is an established principle, which applies to this act, that administrative and judicial reviews are sought on the discharger's own time. (U.S. Congress 1978, p. 468)

Thus, if a facility challenges a permit, contract, or applicable pretreatment standard and delays progress toward compliance, the facility assumes the risk that the permit, contract, or standard will be upheld on judicial review. If the facility begins aggressively to come into compliance only after a decision is made adverse to its interests, it cannot be considered to have acted in good faith. Likewise, if a facility follows business-as-usual procedures, it cannot be considered to have acted in good faith.

1.7 RESPONSE TIME

In cases where the Control Authority is conducting sampling and generating compliance data, Discharge Monitoring Reports shall be generally sent out on a weekly basis to applicable SIU's. These reports contain up-to-date discharge information and constitute an informal enforcement action in cases of enforcement limit violations. It is the responsibility of the industry to have an authorized representative review this report and note any permit violations (*enforcement limits, etc.*) and address the cause(s) of the violations. It is the responsibility of the Industrial Pretreatment Coordinator to submit recommendation(s) for formal enforcement action to City Personnel by the 10th of the following month. City Personnel will initiate the appropriate enforcement action usually within 30 days, but no later than 90 days upon receiving the Industrial Pretreatment Coordinator's recommendations concerning formal enforcement action(s).

In the case where an Industrial User (*SIU or CIU*) is conducting self-monitoring and generating associated compliance monitoring reports, these reports are due by the 15th of the following month, with an extra 30 days allowed for metals sampling results. (Industrial Wastewater Discharge Permit, "Part 3 - Reporting Requirements" and Sewer Use Ordinance, section 7-7-4.3(A-H)) All compliance reports will be reviewed and an evaluation of compliance status made within 10 days upon receipt by the Industrial Pretreatment Coordinator. If, after the evaluation, one or more enforcement actions are deemed necessary, the following time frames for initial enforcement should apply:

If the violation is derived from an Industrial User report that is received by its due date, a 30-day period for initial enforcement action begins on the date when determination of noncompliance is made upon evaluation of the report.

If a report is not received by its due date, the 30-day period shall begin upon discovery of the violation by evaluation of the report, but any report received more than five days late shall in itself constitute an actionable violation, as delineated in the ERG. If the violation is found through an inspection or some other means, the 30-day period begins on the date the Industrial Pretreatment Coordinator or other responsible personnel acquire knowledge of the violation.

Any violations meeting the criteria for SNC will generally be addressed with an Administrative Order **within 15 working days** of the identification as SNC.

After the initial enforcement action has been taken, it is essential that follow-up action be taken to determine the effectiveness of the initial enforcement action. If the initial enforcement brought about the desired result, the follow-up action could simply entail a confirmation letter or e-mail to this effect. If, on the other hand, the initial enforcement action did not achieve the desired result, follow-up actions will be taken.

Follow-up response time begins on the compliance date specified in the initial action. By way of an example, if a NOV required a written response by the 10th day of the month, a follow-up action would be required within 30 days following that date. **These deadlines are the outer limit of enforcement response times. Depending on the situation, a quicker response may be necessary.**

Follow-up actions may include:

- Administrative Order sent certified mail or hand-delivered within 30 calendar days.
- Notice of Compliance Status Review Meeting sent certified mail or hand delivered within 30 calendar days.
- Seek administrative fines within 30 calendar days.
- Seek civil penalties within 30 calendar days.
- Contact City Attorney for possible civil and/or criminal lawsuit within 30 calendar days.
- Initiate termination of service within 30 calendar days.
- Initiate revocation of permit within 30 calendar days.

Violations that threaten health or environmental quality or that cause - or threaten to cause - interference to the POTW or cause the City to violate any condition of its NPDES permit are considered emergencies and will receive **immediate** responses such as halting the discharge or termination of service. (Sewer Use Ordinance Section 7-7-9.7)

1.8 GUIDANCE FOR ALLOCATING ADMINISTRATIVE FINES AND PENALTIES

The maximum administrative fine that can be levied against a discharger is \$1,000 per violation, per day. (Sewer Use Ordinance Sect. 7-7-9.6) The minimum administrative penalty varies depending on the severity of the violation, including whether-or-not the violation falls under significant noncompliance criteria and/or causes endangerment to health or the environment. Guidelines for assessing fines are provided below. The Control Authority reserves the right and discretion to recover all costs associated with SIU discharge violations that cause damage to the POTW, result in POTW interference or pass through, causes the POTW to violate its NPDES permit, or results in additional operational costs to the control authority or contractors. The Control Authority also reserve the right and discretion to negotiate the assessment of these costs.

1.8.1 ENFORCEMENT LIMIT VIOLATIONS

Enforcement limit violation fines accompany Notices of Violation or Administrative Orders. For violations of permit enforcement limits, the fine starts at \$250 per discharge parameter violation. If multiple violations for the same parameter occur in the same month, the fines increase accordingly: \$500 for second violation, \$750 for third violation, and \$1,000 for each subsequent violation beyond the third.

The following table shall be used to determine the proper amount of the fine to be issued.

TABLE 2: ENFORCEMENT LIMIT VIOLATION FINES

Any pollutant parameter violation	\$250
Second violation of same pollutant parameter	\$500
Third violation of same pollutant parameter	\$750
Additional violation(s) of same pollutant parameter	\$1,000

If a discharge interferes with the City's wastewater treatment plant, and/or the City's collections system, sewer pump stations, and/or the discharge causes an upset or pass through at the City's wastewater treatment plant, the City may issue an administrative penalty in addition to fines and as a way to recover any and all the City's expenses incurred as a result of the discharge(s). The fines, penalties and recuperation of the City's cost are in addition to the requirement(s) the City will place on the facility to prevent any future occurrence.

1.8.2 REPORTING VIOLATIONS

A fine may be assessed for late self-monitoring reports (SMR) or incomplete self-monitoring reports. The Control Authority allows a two business day grace period beginning on the date the self-monitoring report is due. The amount of the fine depends on the number of days the report was or continues to be late beyond the grace period, whether the report is incorrect and whether the self-monitoring report contains any discharge violations.

The following table shall be used to determine the proper amount of the fine to be issued.

TABLE 3: REPORTING VIOLATION FINES

<i>Number of days report is late or incorrect</i>	<i>Fine per day for a SMR with no violations</i>	<i>Fine per day for a SMR with discharge violations</i>
<30 days	\$100 per day	\$200 per day
>30 days	\$200 per day	\$400 per day

1.9 INCREASE IN INDUSTRIAL USER SELF-MONITORING FOR EFFLUENT VIOLATIONS

In cases of Industrial User self-monitoring when an SIU has one or more violations of any Wastewater Enforcement Limit, the Control Authority may require the Industrial User to sample for all parameters that were violated once a week for four consecutive weeks, or for four consecutive discharge days, to commence within 7 days of receipt of the Notice of Violation.

Four consecutive weeks refers to a week in which the regulated discharge would occur. Metals, BOD and TSS samples shall be composites as appropriate to the discharge, all others are to be grab samples or as specified in 40 CFR part 136. The sampling specified above may be used to satisfy the facilities monitoring as required in their wastewater discharge permit.

The results of each sample must be received by the Control Authority within five days from when the Industrial User has received results, but in no event longer than thirty days from the date the sample was taken.

Notice of the increase in sampling shall be in letter form and shall be sent certified mail. In the event that it is not possible for an Industrial User to increase the frequency of self-monitoring, then the Industrial Pretreatment Coordinator may perform an unannounced inspection at the Industrial User's site and, if possible, sample for the parameter violated within thirty days of becoming aware of the violation. The cost of this enforcement activity will be billed to the Industrial User.

2. ENFORCEMENT RESPONSE GUIDE

This guide has been developed as a tool for the Control Authority to utilize when determining the appropriate response to a specific violation of pretreatment regulations.

Furthermore, this guide is intended to serve two main purposes:

1. Cover enforcement response that may be appropriate in relation to the nature and severity of the violation and overall degree of noncompliance.
2. Serve as a reference to encourage the uniform application of enforcement response to comparable levels and types of violations as well as a mechanism to review the appropriateness of the response by Twin Falls pretreatment personnel.

Key elements in all enforcement responses are the timeliness with which they are initiated and the effect on compliance. Given many types of violations, applicable legal enforcement procedures, and the variance in resources available to the Control Authority, no specific time frame is established in which to initiate and complete a given response. The professional judgement of Twin Falls pretreatment personnel is essential to effective enforcement.

Within this section, the steps that are recommended to be taken when issuing enforcement actions are outlined. In addition, several tables are included that provide guidance on enforcement response.

2.1 RECOMMENDED STEPS FOR ALL ENFORCEMENT ACTIONS

1. Identify and verify the noncompliance and/or violation
2. Evaluate SNC
3. Identify the legal authority supporting the enforcement action
4. Evaluate compliance history and “good faith” of the Industrial User by consulting the enforcement history in their file
5. Notify affected Industrial User using the appropriate level of response once a violation is verified
6. Where applicable, require the Industrial User to:
 - a) Identify the cause of the violation and report on the cause
 - b) Correct the violation and report on corrective action(s)

- c) Establish a date or dates by which the above corrective measures are to be completed
 - d) Re-sample all parameters in violation to demonstrate compliance within 30 days
7. The affected Industrial User will be required to respond in writing within 15 to 30 days of notification
 8. The Control Authority will review the response (and may meet with the appropriate Industrial User representative) to determine the next step. The following scenarios may apply:
 - a. The Industrial User corrects the violation or pretreatment personnel determine that the response does not warrant escalating enforcement. No further action is warranted
 - b. The Industrial User fails to submit a response, fails to comply, or the violation is not corrected. Control Authority escalates the level of response
 9. Follow-up with escalated enforcement action if the Industrial User's response is not received or if violation continues
 10. Document actions

2.2 EFFECTIVENESS OF ENFORCEMENT

The measure of the effectiveness of an enforcement response includes:

1. Whether the non-complying source returns to compliance as expeditiously as possible.
2. Whether the enforcement response establishes the appropriate deterrent effect for the particular violator and for other potential violators.
3. Whether the particular response is equitable when compared against similar violations and their associated enforcement responses.

2.3 ENFORCEMENT RESPONSE HIERARCHY

2.3.1 RESPONSE LEVEL 1

Level 1 responses are generally informal and represent the enforcement efforts utilized by the Control Authority to bring the Industrial User into compliance before a state of significant noncompliance is achieved. The following enforcement actions are utilized at this level of response:

1. Corrective Notice (*Phone call/e-mail*)

This informal response is the initial action immediately taken by the Control Authority (usually the Pretreatment Coordinator) for missed deadlines, isolated or infrequent self-monitoring deficiencies, minor reporting deficiencies, isolated or infrequent discharge violations, and other minor incidence of noncompliance as detected by sampling and/or inspection. Generally, a time frame for correction of the violations can be agreed upon between the Industrial User and the Control Authority and can include an extension of the deadline if a valid reason is given. In instances of limit violations, immediate verification sampling by the Industrial User and/or the

Control Authority is requested to determine if the violation is continuing and to determine if further action is needed to correct the problem.

In order to establish a compliance record “good faith” history of an Industrial User, it is important to accompany a corrective notice with an update to the User’s enforcement file with the following information:

- Name of the Industrial User
- Name and Title of the person contacted
- Date and Time
- Nature of the violation
- Items discussed
- Results of conversation
- Initials or signature of person initiating the call/e-mail

In many cases, a phone call and/or e-mail is sufficient to bring the Industrial User back into compliance. However, when contacting the Industrial User does not result in measureable progress toward compliance, a letter of violation is issued to the Industrial User.

2. Informal Notice of Violation (NOV)

This informal enforcement action is taken when a phone call and/or e-mail to the Industrial User is not sufficient to prompt the User to return to compliance. When a User appears to be establishing a pattern of violations or when violations are detected by sampling or inspection, a letter of violation may be issued in conjunction with a phone call.

The informal NOV should contain: the nature of the violation (*citing the applicable section in the permit/ordinance*), the date the violation occurred, and the enforcement option that may be utilized should the Industrial User fail to implement corrective action in order to achieve compliance with pretreatment regulations. As needed, a time frame to implement corrective action and show progress toward achieving compliance may also be established in the letter.

3. Certified Notice of Violation

A certified notice of violation is the last enforcement action utilized at Level 1, and is the final attempt to resolve the noncompliance issue before a state of significant noncompliance (SNC) is reached by the User. This enforcement action can also be issued as an initial response to more serious violations such as certain self-monitoring violations, frequent limit violations (when initially discovered through an Industrial User’s semiannual compliance report), or other noncompliance events listed specifically in the enforcement response guide tables. A certified NOV is similar to the informal NOV, but is sent by certified mail to document that the User actually received the letter and the date it was received. A compliance schedule submitted by the User by a certain date is requested in a certified NOV.

It is the intent of the Control Authority to resolve the vast majority of noncompliance issues within the Level 1 category of enforcement action. However, formal enforcement procedures are

necessary when, due to negligence, stubbornness, or lack of interest on the part of the Industrial User, a state of SNC has been achieved.

2.3.2 RESPONSE LEVEL 2

When a state of SNC has been reached by the Industrial User, Level 2 enforcement action is initiated, requiring the Control Authority to issue any number of formal enforcement responses, including: Administrative Orders (AO), Show Cause Hearings, Compliance Orders (CO), Cease and Desist Orders, and/or Judicial Actions (JA).

Level 2 enforcement represents an escalation in enforcement severity and directs the Control Authority to report such enforcement to the EPA as part of the Pretreatment Performance Summary of User noncompliance.

Level 2 enforcement will generally include increased fines and/or compliance schedules with specified due dates by which certain levels of progress toward compliance with pretreatment regulations must be achieved.

2.3.3 RESPONSE LEVEL 3

This level of enforcement is reserved for the extreme occasion when the Industrial User does not respond to an Administrative Order (*or other formal enforcement action*), does not adhere to compliance schedules, and where fines have no effect in bringing the User into compliance with pretreatment regulations. This level of enforcement action generally requires the consultation of the City's Legal Department to determine the appropriateness and legal basis for the action to be implemented, but includes such actions as:

- 1.) Judicial Action (may include civil penalties and injunctive relief)
- 2.) Service Suspension, Termination of Discharge, and/or Permit Revocation

In extreme cases, where no remedies can be mitigated or a state of emergency exists, the Control Authority can revoke or suspend the services of an Industrial User in violation of Federal, State, or Local laws, ordinances, or regulations.

- a.) The Control Authority may revoke a wastewater discharge permit for – but not limited to – the reasons listed in the Sewer Use Ordinance, sect. 7-7-9.8
- b.) The Control Authority may immediately suspend an Industrial User's discharge after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or causes an imminent or substantial endangerment to the health or welfare of persons as outlined in the Sewer Use Ordinance, sect. 7-7-9.7.

Overview of Enforcement Response Tables

The enforcement response tables (**Table 4** through **Table 6**) outline general types of non-compliant conditions and a range of responses that may be appropriate depending on the specific conditions encountered. The column headings used in each table are as follows:

Type of Noncompliance	Specific Nature of Violation	Enforcement Response	SNC	Enforcement Signature
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These column headings are listed and described in more detail below:

- 1) **Type of Noncompliance:** General description of a noncompliant condition.
- 2) **Specific Nature of Violation:** A description is provided to allow City staff to distinguish between the types of enforcement that may be appropriate.
- 3) **Enforcement Response:** Based on the information selected under **Type of Noncompliance** and **Specific Nature of Violation**, the recommended enforcement response(s) are reviewed, and the appropriate enforcement response(s) are identified.
 - a) City staff may select from the enforcement options presented based on a number of factors, including whether the Industrial User is a first time offender or repeat offender, or has demonstrated good faith efforts or negligence (see Section 1.6 Administering Enforcement Action). The selected enforcement action may be stricter or more lenient than that specified for a given type of noncompliance, but Pretreatment staff must clearly document the action taken and why the deviation from the ERP was warranted.
- 4) **SNC:** Determine whether or not the violation meets the criteria for significant noncompliance (SNC) as defined in 40 CFR 403.8(f) (2) (viii) and outlined in **Table 6**.

TABLE 4: DISCHARGE VIOLATIONS

<i>Type of Noncompliance</i>	<i>Specific Nature of Violation</i>	<i>Enforcement Response</i>	<i>SNC?</i>
<i>Unpermitted Discharge</i>	IU unaware of requirement No Harm to POTW/Environment	Level 1: CN/NOV	NO
	IU unaware of requirement Harm to POTW/Environment	Level 2: NOV/AO	YES
	Failure to apply for permit after notification	Level 2: AO	YES
<i>Non Permitted Discharge</i>	IU has not submitted application 90 days prior to expiration	Level 1: CN/NOV	NO
<i>Exceedance of discharge</i>	Occasional exceedance	Level 1: CN/NOV	NO

<i>limits (Permit, Local Limits, Federal Pretreatment Standards)</i>	Reoccurring, magnitude, multiple parameters	Level 2: NOV/AO	YES
	Isolated harm to POTW or environment	Level 2: NOV/AO/JA	YES
	Recurring no harm to POTW or environment	Level 3: NOV/AO/JA	YES
	Recurring harm to POTW or environment	Level 3: JA/Termination of Service	YES
	Dilution	Level 2: NOV/AO	YES
<i>Illegal Discharge</i>	No harm to POTW or environment	Level 1: NOV	NO
	Discharge causes harm or evidence of intent	Level 3: AO/JA/Termination of Service	YES
	Continued discharge after Administrative Order	Level 3: AO/JA/Termination of Service	YES

*CN = Corrective Notice, NOV = Notice of Violation, AO = Administrative Order, JA = Judicial Action

TABLE 5: MONITORING, SAMPLING, AND REPORTING VIOLATIONS

<i>Type of Noncompliance</i>	<i>Specific Nature of Violation</i>	<i>Enforcement Response</i>	<i>SNC?</i>
<i>Reporting Violations (including electronic reporting)</i>	Report is improperly signed or certified	Level 1: CN/NOV	NO
	Late, not significant (> 5 days)	Level 1: CN/NOV	NO
	Late, Significant (45 days or more)	Level2: AO	Yes
	Failure to report spill, slug, or changed discharge	Level 1: NOV	NO

	Reports are repeatedly late or no reports at all	Level 2: AO	YES
	Failure to report spill, slug, or changed discharge (results in harm)	Level 2/3: AO/JA	YES
	Falsification of any kind	Level 2/3: AO/JA	YES
	Inadequate Recordkeeping	Level 1/2: NOV/AO	NO
	Failure to report noncompliance	Level 1: NOV	NO
<i>Monitoring Violations</i>	Failure to monitor pollutants as required by permit	Level 1: NOV	NO
	Recurring failure to monitor	Level 2: AO	YES
	Failure to install monitoring equipment <30 days	Level 1: NOV	NO
	Failure to install monitoring equipment >30 days	Level 2: AO	YES
	Failure to report additional monitoring	Level 1: NOV	NO
<i>Sampling Violations</i>	Sampling at incorrect location	Level 1: NOV	NO
	Incorrect sampling container	Level 1: NOV	NO
	Incorrect sample collection techniques	Level 1: NOV	NO
	Failure to maintain sampling equipment	Level 1/2: NOV/AO	NO

*CN = Corrective Notice, NOV = Notice of Violation, AO = Administrative Order, JA = Judicial Action

TABLE 6: OTHER PERMIT VIOLATIONS

<i>Type of Noncompliance</i>	<i>Specific Nature of Violation</i>	<i>Enforcement Response</i>	<i>SNC?</i>
<i>Compliance Schedules</i>	Missed milestone by less than 30 days, or will not affect final milestone	Level 1: CN/NOV	NO
	Missed milestone by more than 30 days, or will affect final milestone (good cause for delay)	Level 1: CN/NOV	NO

	Missed milestone by more than 90 days, or will affect final milestone (no good cause for delay)	Level 2/3: AO/JA/Termination of Service	YES
	Recurring violation or violations of schedule in Administrative Order	Level 2/3: JA/Termination of Service	YES
<i>Failure to mitigate types of noncompliance or halt production</i>	Does not result in harm	Level 1: NOV	NO
	Does result in harm	Level 2/3: AO/JA/Termination of Service	YES
<i>Failure to properly operate and maintain pretreatment facility</i>	Does not result in harm	Level 1: NOV	NO
	Does result in harm	Level 2/3: AO/JA	YES
<i>Entry Denial</i>	Entry denied or consent withdrawn during inspection	Level 2/3: AO/JA	YES
	Copies of records denied	Level 2/3: AO/JA	YES

TABLE 7: SIGNIFICANT NONCOMPLIANCE

<i>Significant Noncompliance (see 40CFR 403.8(f)(2)(viii))</i>	
<i>Significant Noncompliance Criterion</i>	<i>Enforcement Response</i>
A. Chronic violations of wastewater enforcement limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits	Administrative Order

B. Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including instantaneous limits multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH)	Administrative Order
C. Any other violation of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative Standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW enforcement signature or the general public)	Administrative Order
D. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under Section 33.03.200 to halt or prevent such a discharge	Administrative Order
E. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance	Administrative Order
F. Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules	Administrative Order
G. Failure to accurately report noncompliance	Administrative Order
H. Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment Program	Administrative Order

3. DEFINITIONS

The terms used in this ERP are defined below.

Administrative Fine: A punitive monetary charge unrelated to actual treatment costs that are assessed by the Control Authority rather than a court.

Administrative Order (AO): A document that orders the violator to perform a specific act or refrain from an act.

Cease and Desist Order: An administrative order directing an Industrial User to immediately halt illegal or unauthorized discharges.

Civil Litigation: A lawsuit filed in a civil court. If the court rules that the defendant Industrial User violated the law, the court may impose civil penalties, injunctions or other equitable remedies and/or cost recovery.

Civil Penalty: A punitive monetary award granted by a court to the Control Authority against a noncompliant Industrial User.

Compliance Order: An administrative order directing a noncompliant industry to achieve or restore compliance by a date specified in the order.

Compliance Schedule: A schedule of required activities (also called milestones) necessary for an Industrial User to achieve compliance with all pretreatment program requirements.

Compliance Status Review Meeting: An informal enforcement action requiring a meeting between the Control Authority and the noncompliant Industrial User.

Consent Order: An administrative order embodying a legal enforcement agreement between the Control Authority and the noncompliant Industrial User designed to restore the user to compliance status.

Control Authority: The entity directly administering and enforcing pretreatment standards and requirements against dischargers. For purposes of this Enforcement Response Plan, the Control Authority is the City of Twin Falls.

Criminal Prosecution: A criminal charge brought by the Control Authority against an accused violator. A court trial-by-jury is generally required and upon conviction, punishment may include a monetary penalty, imprisonment, or both.

Discharger: A source of indirect discharge which does not constitute a "discharge of pollutants" under regulations issued pursuant to the Clean Water Act §402 (an NPDES discharge). Dischargers include those domestic, industrial and commercial establishments whose discharges to the City's sewerage system include non-sanitary wastes.

Enforcement Limit: The maximum allowable discharge of a pollutant during a calendar day before enforcement action is taken against a discharger. **Note:** *In some, but not all cases, this can be considered discharge limit for some parameters.*

Fine: A punitive monetary charge for a violation of the law. Often used synonymously with "penalty" although the term "fine" generally implies the use of administrative rather than civil (judicial) procedures.

Industrial User (IU): A source of indirect discharge that does not constitute a "discharge of pollutants" under regulations issued pursuant to the Clean Water Act §402 (an NPDES discharge). Industrial Users include those industries and commercial establishments whose discharges to the City's sewerage system include non-sanitary wastes, and who are regulated under the City's Pretreatment Program under a system of discharge permits. (40 CFR 403.3(j))

Good Faith: A characteristic of actions exhibited by a discharger that show prompt and significant measures undertaken to achieve compliance. Good faith may also be defined as the user's honest

intention to remedy its noncompliance coupled with actions that support this intention (see EPA's *Guidance for Developing Control Authority Enforcement Response Plans*, 4.1.6).

Judicial Action or Case: An enforcement action that involves a court. (The action may be either civil or criminal in nature).

Notice of Violation (NOV): A Control Authority document notifying a discharger that it has violated pretreatment standards and requirements, including but not limited to local discharge limits. (Sewer Use Ordinance, Sect. 7-7-9.1)

Penalty: A monetary or other punitive measure, usually associated with a court action. For the "Penalty" term is often synonymous with "fine," although the term "penalty" generally implies the use of civil (judicial) procedures.

Publicly Owned Treatment Works (POTW): A system of conveyances and treatment for wastewater and industrial wastes. Also refers to the government officials or Control Authority responsible for operation and maintenance of the collection system or treatment plant and the administration of the pretreatment program.

Responsible Personnel: A person responsible for performing or authorizing an Enforcement Action, including the Industrial Pretreatment Coordinator, the Wastewater Treatment Plant Project Manager, or the City Engineer or his/her designees, as specified in this ERP.

Show Cause Order: An administrative order directing a noncompliant user to appear before the Control Authority, explain its noncompliance, and show cause why more severe enforcement actions against the user should not go forward. (Sewer Use Ordinance, Sect. 7-7-9.3)

Significant Noncompliance (SNC): A violation that meets one or more of the following criteria (see 40 CFR 403.8(f) (2) (viii)):

- (A) Chronic violations of wastewater enforcement limits, defined here as those in which 66 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including instantaneous limits;
- (B) Technical Review Criteria (TRC) violations, defined here as those in which 33 percent or more of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement, including instantaneous limits multiplied by the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (C) Any other violation of a Pretreatment Standard or Requirement (daily maximum, long-term average, instantaneous limit, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (D) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under Section 33.03.200 to halt or prevent such a discharge;

(E) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) Failure to accurately report noncompliance;

(H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local Pretreatment Program.

Exhibit B

INDUSTRIAL USER SURCHARGE PROGRAM SOP CITY OF TWIN FALLS INDUSTRIAL PRETREATMENT PROGRAM

The City of Twin Falls (City) has recently revised its *Enforcement Response Plan* in order to continue to improve their pretreatment program. Part of this revision was to look at the possibility of implementing a surcharge program. The basis of a surcharge program is to continually allow the City and its industrial partners the ability to remain compliant with federal, state, and local pretreatment standards. In order to bridge the *Enforcement Response Plan* and a surcharge program together, the City prepared this document (*Industrial User Surcharge Program SOP*). As an independent document, the City has the ability to modify it more frequently, which provides the City with the ability to be more dynamic in its implementation of the program. Both the *Enforcement Response Plan* and this *Industrial User Surcharge Program SOP* will be used to implement the City's pretreatment program.

Having the goal in mind, the City developed a program that facilitates compliance with federal, state, and local pretreatment standards. This document outlines and details the surcharge program and its administration, along with a fining structure for enforcement limit exceedances in the individual industrial user permits. Each industrial user permit will have specific surcharge threshold and requirements incorporated into them to better implement compliance.

The administrative portions of the surcharge programs is outlined in Tables 1 through 4 below. Table 1 outlines the required administrative fines for violations of industrial permits and pretreatment regulations. Table 2 defines the administrative fines for excessive surcharging duration. Tables 3 and 4 outline the surcharging levels and rates associated with the pretreatment program. Charges due to surcharging or enforcement actions, along with monthly discharge monitoring reports, will be sent out at the beginning each month with the industrial utility billing invoices for the previous month's discharges.

Note: Enforcement limits, administrative fines, and Enforcement Rates have been included in the following tables as a reminder of enforcement. The Surcharge Program is not for enforcement and does not supersede the *Enforcement Response Plan*. See the City's *Enforcement Response Plan* for full details regarding enforcement.

TABLE 1: ADMINISTRATIVE FINES: VIOLATIONS

Any pollutant parameter violation	\$250
Second violation of same pollutant parameter	\$500
Third violation of same pollutant parameter	\$750
Additional violation(s) of same pollutant parameter	\$1,000

**note: Violations accrued during a month*

TABLE 2: ADMINISTRATIVE FINES FOR EXCESSIVE SURCHARGING

Consecutive Days of Surcharging 6-9	\$750 per day
Consecutive Days of Surcharging 10+	\$1,000 per day

**note: After 10 consecutive days of surcharging during a month, a meeting with the City's Engineer Department and the Industrial Pretreatment Coordinator must be scheduled within 7 days of the 10th consecutive surcharge day.*

**note: Surcharging period begins once lab results have been confirmed.*

TABLE 3: ENFORCEMENT VS SURCHARGE LEVELS

Pollutants	Surcharge	Enforcement Level
pH		Outside permit limit 6.0-9.5
BOD	Up to 1.4x Surcharge Threshold	Over 1.4x Surcharge Threshold
TSS	Up to 1.4x Surcharge Threshold	Over 1.4x Surcharge Threshold
FOG	Up to 1.4x Surcharge Threshold	Over 1.4x Surcharge Threshold
Flow	Up to 1.2x Surcharge Threshold	Over 1.2x Surcharge Threshold

**note: Surcharge thresholds are defined on each IU's Industrial Wastewater discharge permit*

TABLE 4: SURCHARGE RATES

Pollutant	1.0 - 1.2x the Surcharge Threshold	1.2 - 1.4x the Surcharge Threshold	Over 1.4x the Surcharge Threshold
BOD	5x the billing rate	10x the billing rate	15x the billing rate
TSS	5x the billing rate	10x the billing rate	15x the billing rate
FOG	\$60 per mg/L over permit limit.		
Flow	10x the billing rate		15x the billing rate
Metals	\$20 per percentage over wastewater discharge permit limit, (ex: lead limit is 0.9 mg/l; discharge of 1.8 is 200% over limit and would incur a fine of: \$20 x 200=\$4,000)		
	\$25 for every 0.1 standard pH unit up to ± 0.5 standard units outside of permit limit		
pH	\$50 for every 0.1 standard pH unit above ± 0.5 standard pH units outside of permit limit		

****note: any discharge over the 1.0 Surcharge Threshold for pH and Metals will result in a violation. Any discharge over the 1.4 Surcharge Threshold for all other pollutants will result in a violation.***

As with the *Enforcement Response Plan*, the City reserve the right to bring enforcement actions against excessive violations through either fines, improvement projects which help eliminate future violations, or other means in order to maintain compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit or related programs. The city also retains the right to use fines/penalties for improvement projects which help eliminate future violations. The City retains the ability to evaluate the excessive nature of the violations with each industrial user.



Date: Monday, October 19, 2020
To: Honorable Mayor and City Council
From: Jason Brown, Environmental Engineer, Environmental Engineer

ACTION ITEM

Request:

Request to adopt an Ordinance #2020-018 to update the current Twin Falls Sewer Use Ordinance.

Time Estimate:

10 Minutes

Background:

On July 15, 2020 the Idaho Department of Environmental Quality (IDEQ) conducted a pretreatment program audit of the City of Twin Falls industrial pretreatment program. One of the issues identified in IDEQ's report was the City's Sewer Use Ordinance (SUO). The current SUO still has the Environmental Protection Agency (EPA) as the Approval Authority for our municipal wastewater discharge. Since IDEQ now has jurisdiction over municipal wastewater discharges in the State of Idaho, they requested that the City update the SUO to reflect the change from EPA to IDEQ. IDEQ also requested that NPDES be changed to IPDES to reflect this change.

Approval Process:

City Council approval allows for the SUO to reflect that IDEQ is the approval authority for municipal wastewater discharges in the State of Idaho.

Three steps must be completed for an ordinance to be in effect: 1. Conduct the proper readings, 2. Pass the ordinance by roll call vote of the council and record it in the minutes, and 3. Publication of the Ordinance in the official paper. We ask council to dispense with the reading requirements and place the ordinance on final reading by title only. City Council approval allows for the SUO to reflect that IDEQ is the approval authority for municipal wastewater discharges in the State of Idaho.

Budget Impact:

None

Regulatory Impact:

The revision to the SUO helps the City comply with state and federal regulations.

History:

N/A

Analysis:

N/A

Conclusion:

Staff recommends that the City Council approve the revised SUO Ordinance.

Attachments:

1. 2020 Sewer Use Ordinance - FINAL

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, REPEALING AND REPLACING CHAPTER 7, TITLE 7 OF THE TWIN FALLS CITY CODE SETTING FORTH UNIFORM REQUIREMENTS FOR DISCHARGERS INTO THE SYSTEM AND ENABLING THE “CONTROL AUTHORITY,” THE CITY OF TWIN FALLS, TO PROTECT PUBLIC HEALTH IN CONFORMITY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING THERETO; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR PUBLICATION BY SUMMARY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TWIN FALLS, IDAHO:

SECTION 1: That Chapter 7 of Title 7 of the Twin Falls City Code is hereby repealed.

SECTION 2: That Title 7 of the Twin Falls City Code is hereby replaced as follows:

“CHAPTER 7
SEWER USE ORDINANCE

7-7-1: GENERAL PROVISIONS

7-7-1.1 Purpose and Policy (EPA1.1)

(Hereafter, “EPA” is the comparable EPA Model Pretreatment Ordinance reference).

This chapter sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the City of Twin Falls and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 USC 1251 et seq.) and the General Pretreatment Regulations (40 CFR Part 403). The objectives of this ordinance are:

- A. To prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW;
- B. To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations;
- D. To protect POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public; and

- E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW.

This ordinance shall apply to all users of the POTW. The ordinance authorizes the issuance of industrial wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

7-7-1.2 Administration (EPA 1.2)

Except as otherwise provided herein, the City shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the City may be delegated by the City to City personnel. Implementation of the provisions of this ordinance may be delegated to a contractor by consent of the City Council.

7-7-1.3 Definitions (EPA 1.3)

Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

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

Applicable Pretreatment Standards. For any specified pollutant, City prohibitive standards, City specific pretreatment standards (local limits), State of Idaho pretreatment standards, or EPA's Categorical Pretreatment Standards (when effective), whichever standard is appropriate or most stringent.

Approval Authority. Idaho Department of Environmental Quality (DEQ).

Authorized Representative of the User.

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

- (3) If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her designee.
- (4) The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in § 403.5(a)(1) and (b). BMP also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at twenty (20)° Celsius, usually expressed as a concentration [milligrams per liter (mg/l)].

Bypass. Means the intentional diversion of waste-streams from any portion of an industrial user's treatment facility. (cf, 40 CFR 403.17)

Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the US EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of users and which appears in 40 CFR Chapter I, Subchapter N, Parts 405-471, et sec.

Categorical User. A user regulated by one of EPA's Categorical Pretreatment Standards

City. The City of Twin Falls or the City Council of the City of Twin Falls.

Clean Water Act. The Water Quality Act as amended, 33 U.S.C. 1251, et seq.

Chemical Oxygen Demand or COD. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

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

Control Authority refers to: The City of Twin Falls

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

Daily Maximum. The arithmetic average of all effluent samples for pollutant collected during a calendar day.

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

Environmental Protection Agency (EPA). The U.S. Environmental Protection Agency or, where appropriate, the the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

Existing Source. A categorical industrial user, the construction or operation of whose facility commenced prior to the publication by EPA of proposed categorical pretreatment standards, which would be applicable to such source if and when the standard is thereafter promulgated in accordance with Section 307 of the Act.

Existing User. Any non-categorical industrial user which was discharging wastewater prior to the effective date of this ordinance.

Grab Sample. An individual sample collected over a period of time not exceeding fifteen 15 minutes.

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

Industrial User or User. A source of indirect discharge (cf. 40 CFR 403.3 (j))

Industrial Wastewater Discharge Permit. An authorization or equivalent control document issued by the City to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this ordinance.

Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City's **IPDES** permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/ regulatory provisions or permits issued hereunder, or more stringent State or local regulations: Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan

prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Liquid Waste Hauler. Any person involved in the transportation of any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks by means other than the City collection system. (cf. § 7-7-3)

May. Is permissive (see “shall”).

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

National Pretreatment Standard, Pretreatment Standard, or Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with Section 307(b) and (c) of the Clean Water Act, which applies to industrial users. This term includes prohibitive discharge limits established pursuant to 40 CFR 403.5 (cf. 40 CFR 403.3 (l)).

New Source.

- (1) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
 - (a) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - (b) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 - (c) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (1)(c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
 - (a) Begun, or caused to begin as part of a continuous on-site construction program

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

New User. A "new user" is a user that is not regulated under federal categorical pretreatment standards but that applies to the City for a new building permit or occupies an existing building and plans to commence discharge of wastewater to the City's collection system after the effective date of this ordinance. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an "existing user" if no significant changes are made in the manufacturing operation.

Noncontact Cooling Water. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

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

Permittee: A user issued an industrial wastewater discharge permit.

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

Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS, turbidity, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].

Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard. (cf. 40 CFR 403.3 (a))

Pretreatment Requirement. Any substantive or procedural requirement related to pretreatment imposed on a user, other than a National Pretreatment Standard. (cf. 40 CFR 403.3 (t))

Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances, which appear in Sections 7-7-2.1 (A) and (B) of this ordinance.

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

Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

Severe Property Damage. Means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (cf. 403.17 (a) (2))

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

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

Shall (May). "Shall" is mandatory, ("may" is permissive).

Significant Industrial User.

- (1) A user subject to categorical pretreatment standards; or
- (2) A user that:
 - (a) Discharges an average of 25,000 gallons per day (GPD) or more of process wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler blowdown wastewater); or
 - (b) Contributes a process waste-stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - (c) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (3) Upon a finding that a user meeting the criteria in Subsection (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any applicable pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a user and in

accordance with procedures in 40 CFR 403.8(f)(6) determine that such user should not be considered a significant industrial user.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in Section 7-7-2.1 through 7-7-2.4 of this ordinance or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause pass through or interference.

Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

Treatment Plant Effluent. The discharge from the POTW into waters of the United States.

Upset. Means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, lack of preventive maintenance, or careless or improper operation. (cf. 40 CFR 403.16)

User or Industrial User. A source of indirect discharge.

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

Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment including recycling and reclamation of municipal sewage and industrial waste.

The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.

7-7-1.4 Abbreviations (EPA 1.4)

The following abbreviations shall have the designated meanings:

<u>ASPP</u> -	Accidental Spill Prevention Plan
<u>BOD</u> -	Biochemical Oxygen Demand
<u>CFR</u> -	Code of Federal Regulations
<u>COD</u> -	Chemical Oxygen Demand
<u>EPA</u> -	U.S. Environmental Protection Agency
<u>GPD</u> -	Gallons per day

<u>L</u>	-	Liter
<u>LEL</u>	-	Lower Explosive Limit
<u>mg</u>	-	Milligrams
<u>mg/L</u>	-	Milligrams per liter
<u>IPDES</u>	-	Idaho Pollutant Discharge Elimination System
<u>O&M</u>	-	Operation and Maintenance
<u>POTW</u>	-	Publicly Owned Treatment Works
<u>RCRA</u>	-	Resource Conservation and Recovery Act
<u>SIC</u>	-	Standard Industrial Classifications
<u>SNC</u>	-	Significant Non-compliance
<u>SWDA</u>	-	Solid Waste Disposal Act (42 U.S.C. 6901, <u>et seq.</u>)
<u>TSS</u>	-	Total Suspended Solids
<u>USC</u>	-	United States Code

7-7-2: GENERAL REQUIREMENTS

7-7-2.1 Prohibited Discharge Standards (EPA 2.1)

- A. General Prohibitions: No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other National, State, or local pretreatment standards or requirements.
- B. Specific Prohibitions: No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste-streams with a closed-cup flash point of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;
 - (2) Wastewater having a pH less than 5.0 or greater than 9.5, or otherwise causing corrosive structural damage to the POTW or equipment;
 - (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference [but in no case solids greater than 1/2 inch (1/2") or 0.7 centimeter(s) (0.7cm) in any dimension];
 - (4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;

- (5) Wastewater having a temperature which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F (40°C) unless the Approval Authority, upon the request of the POTW, approves alternate temperature limits;
- (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
- (8) Trucked or hauled pollutants, except at discharge points designated by the City.
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or health, or to prevent entry into the sewers for maintenance or repair;
- (10) Wastewater containing any radioactive wastes or isotopes except as specifically approved by the City in compliance with applicable State or Federal regulations;
- (11) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, de-ionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized;
- (12) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes;
- (13) Medical wastes, except as specifically authorized by the City;
- (14) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
- (15) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (16) Any liquid, solids, or gases which by reason of their nature or quantity are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two (2) successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system), be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.
- (17) Grease, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent

lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

- (18) Any substance which will cause the POTW to violate its **IPDES** permit and/or other disposal system permits.
- (19) Any wastewater, which in the opinion of the City can cause harm either to the sewers, sewage treatment process, or equipment; have an adverse effect on the receiving stream; or can otherwise endanger life, limb, public property, or constitute a nuisance, unless waived by the City (except that no waiver shall be given from categorical pretreatment standards).
- (20) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septic tank waste, or other wastewater unless said person has first obtained testing and approval as may be generally required by the City of Twin Falls and has paid all fees assessed for the privilege of said discharge.
- (21) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA)

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

7-7-2.2 Federal Categorical Pretreatment Standards (EPA 2.2)

The National categorical pretreatment standards as amended and promulgated by EPA pursuant to the Act and as found at 40 CFR Chapter I, Subchapter N, Parts 405-471, are hereby incorporated and shall be enforceable under this ordinance.

7-7-2.3 State Requirements (EPA 2.3)

State requirements and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this ordinance or in other applicable ordinances.

7-7-2.4 Local Limits (EPA 2.4)

Pollutant limits shall be established by resolution of the City Council to protect against pass through and interference. No SIU shall discharge wastewater containing pollutant levels in excess of the daily maximum allowable discharge limits.

The limits apply at the point where the wastewater is discharged to the POTW (end of the pipe). All concentrations for metallic substances are for "total" metal unless indicated otherwise. The City may impose mass limitations in addition to (or in place of) the concentration-based limitations. Where a user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply.

7-7-2.5 City's Right of Revision (EPA 2.5)

The City reserves the right to establish, by ordinance or in industrial wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

7-7-2.6 Special Agreement (EPA 2.6)

The City reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. A special agreement shall not constitute, nor be construed as a replacement for, an industrial wastewater discharge permit. However, if applicable, industrial users may request a net/gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the Approval Authority in accordance with 40 CFR 403.13.

7-7-2.7 Dilution (EPA 2.7)

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

7-7-2.8 Pretreatment Facilities (EPA 2.8)

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

7-7-2.9 Deadline for Compliance with Applicable Pretreatment Requirements (EPA 2.9)

Compliance by existing sources covered by Categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate Standard. The City shall establish a final compliance deadline date for any existing user not covered by Categorical Pretreatment Standards or for any categorical user when the local limits for said user are more restrictive than the federal Categorical Pretreatment Standards.

New sources and new users are required to comply with applicable pretreatment standards within the shortest feasible time, not to exceed 90 days from the beginning of

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

Any industrial wastewater discharge permit issued to a categorical user shall not contain a compliance date beyond any deadline date established in an applicable Categorical Pretreatment Standard. Any other existing user or a categorical user that must comply with a more stringent local limit which is in non-compliance with any local limit shall be required to comply with a compliance schedule to insure compliance within the shortest time feasible. The compliance schedule may be included in a control mechanism, administrative order or compliance order, or other appropriate enforcement or control remedy.

7-7-2.10 Additional Pretreatment Measures (EPA 2.10)

- A. Whenever deemed necessary, the City may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, issue an industrial wastewater discharge permit solely for flow equalization, relocate and/or consolidate points of discharge, separate sewage waste-streams from industrial waste-streams, and such other actions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this ordinance.
- B. Grease, oil, and sand interceptors shall be provided when, in the opinion of the City, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand, except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at the user's expense.
- C. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

7-7-2.11 Accidental Spill Prevention Plans (EPA 2.11)

The City may require any user to develop and implement an accidental spill prevention plan (ASPP) or slug control plan. Where deemed necessary by the City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the user's cost and expense. An accidental spill prevention plan or slug control plan showing facilities and operating procedures to provide this protection shall be submitted to the City for review and approval before implementation. The City shall determine which user is required to develop a plan and require said plan to be submitted within 180 days after notification by the City. The City may develop such a plan for any user. (cf., § 3.3 EPA MODEL: Jan 2007 EPA 833-B-06-002.) Each user shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by the City. Review and approval of such plans and operating procedures by the City shall not relieve the user from the responsibility to modify its facility as necessary to meet the requirements of this ordinance.

Any user required to develop and implement an accidental spill prevention plan shall submit a plan which addresses, at a minimum, the following:

- A. Description of discharge practices, including non-routine batch discharges;
- B. Description of stored chemicals;
- C. Procedures for immediately notifying the POTW of any accidental or slug discharges with procedures for follow-up written notification within five (5) days. Such notification must also be given for any discharge which would violate any of the standards in Sections 7-7-2.1 through 7-7-2.4 of this ordinance; and
- D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic chemicals (including solvents), and/or measures and equipment for emergency response.

7-7-2.12 Septic Tank Wastes (EPA 2.12)

- A. Septic tank waste may be introduced into the POTW only at a designated receiving structure within the treatment plant area, and at such times as are established by the City. Such wastes shall not violate this Section of the ordinance or any other requirements established or adopted by the City. Industrial wastewater discharge permits for individual vehicles to use such facilities shall be issued by the City.
- B. Septic tank waste haulers may only discharge loads at locations specifically designated by the City. No load may be discharged without prior consent of the City. The City may collect samples of each hauled load to ensure compliance with applicable pretreatment standards. The City may require the hauler to provide a waste analysis of any load prior to discharge.
- C. Septic tank waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the waste hauler, permit number, truck identification, sources of waste, and volume and characteristics of waste.
- D. Fees for dumping hauled wastes will be established as part of the user fee system as authorized in Section 7-7-14.1 of this ordinance.

7-7-3: INDUSTRIAL WASTEWATER DISCHARGE PERMIT REQUIREMENTS (EPA 3.0)

No significant industrial user shall discharge wastewater into the POTW without first obtaining an industrial wastewater discharge permit from the City; the permit must be enforceable and contain all the elements as required by 40 CFR 403.8(f)(1)(iii)(B). Any violation of the terms and conditions of an industrial wastewater discharge permit shall be deemed a violation of this ordinance and subjects the permittee to the sanctions set forth in this ordinance. Obtaining an industrial wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State pretreatment standards or requirements or with any other requirements of Federal, State, and local law.

The City may require other users, including liquid waste haulers, to obtain industrial wastewater discharge permits or liquid waste hauler permits.

7-7-3.1 Industrial Wastewater Discharge Permitting: Existing SIU (EPA 3.1)

Any SIU that was discharging wastewater into the POTW prior to the effective date of this ordinance and that wishes to continue such discharges in the future shall, within 30 days after notification by the City, submit a completed permit application to the City in accordance with Section 7-7-3.4 of this ordinance and shall not cause or allow discharges to the POTW to continue after 90 days after notification by the City except in accordance with an industrial wastewater discharge permit issued by the City.

7-7-3.2 Industrial Wastewater Discharge Permitting: New Source and New user (EPA 3.2)

At least 90 days prior to the anticipated start-up, any new source, which is a source that becomes a user subsequent to the proposal of an applicable categorical pretreatment standard that is later promulgated, and any new user considered by the City to fit the definition of SIU shall apply for an industrial wastewater discharge permit and will be required to submit to the City at least the information listed in paragraphs (A)-(E) of Section 7-7-3.4. A new source or new user is prohibited from discharging without first being issued by the City an industrial wastewater discharge permit. New sources and new users shall also be required to include in their application information on the method of pretreatment they intend to use to meet applicable pretreatment standards. New Sources and new users shall give estimates of the information requested in paragraphs (D) and (E) of Section 7-7-3.4.

7-7-3.3 Industrial Wastewater Discharge Permitting: Extra-jurisdictional Users (EPA 3.3)

Any existing user who is located beyond the City limits and who is required to obtain an industrial wastewater discharge permit shall submit an industrial wastewater discharge permit application as outlined in Section 7-7-3.1. New Sources and new users who are located beyond the City limits and who are required to obtain an industrial wastewater discharge permit shall comply with Section 7-7-3.2.

A. If another municipality, or industrial user(s) located within another municipality, contributes wastewater to the City's collection system, the City shall enter into an inter-municipal agreement with the contributing municipality.

B. Prior to entering into an agreement required by paragraph A above the City shall request the following information from the contributing municipality:

1. A description of the quality and volume of wastewater discharged to the City by the contributing municipality;
2. An inventory of all users located within the contributing municipality that are discharging to the City's collection system; and
3. Any other information as the City may deem necessary to enter into an inter-municipal agreement.

C. An inter-municipal agreement, as required by paragraph A above, shall contain the following conditions:

1. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 7-7-4.1 of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the City's ordinance or Local Limits;
2. A requirement for the contributing municipality to submit a revised industrial user inventory on at least an annual basis;
3. A provision specifying which pretreatment implementation activities, including industrial wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the City; and which of these activities will be conducted jointly by the contributing municipality and the City;
4. A requirement for the contributing municipality to provide the City with access to all information that the contributing municipality obtains as part of its pretreatment activities;
5. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the City's collection system;
6. Requirements for monitoring the contributing municipality's discharge;
7. A provision ensuring the City or its agents access to the facilities of industrial users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City; and
8. A provision specifying remedies available for breach of the terms of the inter-municipal agreement.

7-7-3.4 Industrial Wastewater Discharge Permit Application Contents (EPA 3.4)

All users required to obtain an industrial wastewater discharge permit must submit, at a minimum, the following information. The City shall approve a form to be used as a permit application. Categorical users submitting the following information shall have complied with 40 CFR 403.12(b).

- A. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners;
- B. Permits. The user shall submit a list of all environmental control permits held by or for the facility;
- C. Description of operations. The user shall submit a brief description of the nature, average rate of production, and Standard Industrial

Classification of the operation(s) carried out by such Industrial User, including a list of all raw materials and chemicals used or stored at the facility which are or could accidentally or intentionally be discharged to the POTW; number and type of employees; hours of operation; each product produced by type, amount, process or processes, and rate of production; type and amount of raw materials processed (average and maximum per day) and the time and duration of discharges. This description should also include a schematic process diagram which indicates points of discharge to the POTW from the regulated or manufacturing processes; site plans; floor plans; mechanical and plumbing plans; and details to show all sewers, sewer connections, inspection manholes, sampling chambers and appurtenances by size, location and elevation.

D. Flow Measurement.

(1) Categorical User:

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- (i) Regulated or manufacturing process streams; and
- (ii) Other streams as necessary to allow use of the combined waste-stream formula [40 CFR 403.6(e)].

(2) Non-Categorical User

The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- (i) Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as required by the City.

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

E. Measurements of pollutants.

(1) Categorical User:

- (i) The user shall identify the applicable pretreatment standards for each regulated or manufacturing process.
- (ii) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the Categorical Pretreatment Standard or as required by the City) of regulated pollutants (including standards contained in Sections 7-7-2.1 through 7-7-2.4, as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum

and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Section 7-7-5.

(iii) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(iv) Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) for a categorical user, this adjusted limit along with supporting data shall be submitted as part of the application.

(2) Non-Categorical User

(i) The user shall identify the applicable pretreatment standards for its wastewater discharge.

(ii) In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration in the discharge (or mass where required by the City) of regulated pollutants contained in Sections 7-7-2.1 through 7-7-2.4, as appropriate. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Section 7-7-5.

(iii) The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

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

F. Certification. The user shall submit a statement, worded as specified in Section 7-7-3.5, which has been reviewed by an authorized representative of the user, and certified by a qualified professional, indicating whether the applicable Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) and/or additional pretreatment is required for the user to meet the applicable Pretreatment Standards and Requirements.

G. Compliance Schedule. If additional pretreatment and/or O and M will be required to meet the applicable Pretreatment Standards, the user shall submit the shortest schedule by which the user will provide such additional pretreatment and/or O and M. The user's schedule shall conform with the requirements of Section 7-7-4.4. The

completion date in this schedule shall not be later than the compliance date established pursuant to Section 7-7-2.9 of this Ordinance.

- (1) Where the user's categorical Pretreatment Standard has been modified by a removal allowance (40 CFR 403.7), the combined waste-stream formula (40 CFR 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR 403.13) at the time the user submits the report required by this paragraph, the information required by paragraphs (F) and (G) of this section shall pertain to the modified limits.
- (2) If the categorical Pretreatment Standard is modified by a removal allowance (40 CFR ' 403.7), the combined waste-stream formula (40 CFR ' 403.6(e)), and/or a Fundamentally Different Factors variance (40 CFR ' 403.13) after the user submits the report required by paragraphs (F) and (G) of this section, then a report containing modified information shall be submitted by the user within 60 days after the new limit is approved.

- H. The user shall submit any other information as may be deemed necessary by the City to evaluate the industrial wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

7-7-3.5 Signatory and Certification Requirement (EPA 3.5)

All industrial wastewater discharge permit applications and user reports must be signed by a responsible officer or manager, or sole proprietor or general partner as applicable, or duly authorized representative.

- A. For the purpose of this section, a responsible officer or manager means:
 - a. a president, vice-president, secretary, or treasurer of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

- b. the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. This authorization must be made in writing by the principal executive officer or ranking elected official and submitted to the Approval Authority prior to or together with the report being submitted of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- B. A duly authorized representative is an individual designated by the responsible officer, manager, sole proprietor or general partner in writing. The written authorization must be submitted to the City and also specifies either an individual or a position having the responsibility of the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company. If an authorization in this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the City prior to or together with any reports to be signed by an authorized representative.

7-7-3.6 Industrial Wastewater Discharge Permit Decisions (EPA 3.6)

The City will evaluate the data furnished by the user and may require additional information. Within 30 days of receipt of a complete industrial wastewater discharge permit application, the City will determine whether or not to issue an industrial wastewater discharge permit. Upon a determination to issue, the permit shall be issued within 30 days of full evaluation and acceptance of the data furnished. The City may deny any application for an industrial wastewater discharge permit.

7-7-3.7 Industrial Wastewater Discharge Permit Contents (EPA 3.7)

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

- A. Industrial wastewater discharge permits must contain the following conditions:
 - (1) A statement that indicates industrial wastewater discharge permit duration, which in no event shall exceed five (5) years;
 - (2) A statement that the industrial wastewater discharge permit is non-transferable without prior notification to and approval from the City, and provisions for furnishing the new owner or operator with a copy of the existing industrial wastewater discharge permit;
 - (3) Applicable pretreatment standards and requirements, including effluent limits, Best Management Practices (BMPs) based on applicable general pretreatment standards in 40 CFR Part 403 which may be made a part of this ordinance, categorical pretreatment standards, local limits, and any special State requirements;
 - (4) Self monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;
 - (5) Requirement for immediate notification to the City where self-monitoring results indicate non-compliance;
 - (6) Requirement to report a bypass or upset of a pretreatment facility;
 - (7) Requirement to report immediately to the City all discharges, including slug loadings, that could cause problems to the POTW;
 - (8) Requirement for the SIU who reports non-compliance to notify the City within 24 hours of becoming aware of the non-compliance and repeat the sampling and analysis and submit results to the City within 30 days after becoming aware of the violation.

- (9) A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.
 - (10) Requirements to control Slug discharges, if determined by the POTW to be necessary.
- B. Industrial Wastewater discharge permits may contain, but need not be limited to, the following conditions:
 - (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
 - (2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
 - (3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or non-routine discharges;
 - (4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
 - (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW;
 - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment including flow measurement devices;
 - (7) A statement that compliance with the industrial wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the term of the industrial wastewater discharge permit;
 - (8) Other conditions as deemed appropriate by the City to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.

7-7-3.8 Industrial Wastewater Discharge Permit Appeals (EPA 3.8)

Any person, including the user, may petition the City to reconsider the terms of an industrial wastewater discharge permit within 30 days of its issuance.

- A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.
- B. In its petition, the appealing party must indicate the industrial wastewater discharge permit provisions objected to, the reasons for objections, and

proposed alternative conditions, if any, it seeks to place in the industrial wastewater discharge permit.

- C. The effectiveness of the industrial wastewater discharge permit shall not be stayed pending the appeal.
- D. If the City fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an industrial wastewater discharge permit, not to issue an industrial wastewater discharge permit, or not to modify an industrial wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.
- E. Aggrieved parties seeking judicial review of the final administrative industrial wastewater discharge permit decision must do so by filing a complaint with the Clerk of the District Court for the Fifth Judicial District, State of Idaho, within six months.

7-7-3.9 Industrial Wastewater Discharge Permit Duration (EPA 3.9)

Industrial wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An industrial wastewater discharge permit may be issued for a period less than five (5) years, at the discretion of the City. Each industrial wastewater discharge permit shall indicate a specific date upon which it will expire.

7-7-3.10 Industrial Wastewater Discharge Permit Modification (EPA 3.10)

The City may modify the industrial wastewater discharge permit for good cause including, but not limited to, the following:

- A. To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;
- B. To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of industrial wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, or the receiving waters;
- E. Violation of any terms or conditions of the industrial wastewater discharge permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the industrial wastewater discharge permit application or in any required report;
- G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the industrial wastewater discharge permit; or

- I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

7-7-3.11 Industrial Wastewater Discharge Permit Transfer (EPA 3.11)

Industrial wastewater discharge permits may be transferred to a new owner and/or operator only if the permittee gives at least 30 days advance notice to the City and the City approves the industrial wastewater discharge permit transfer. The notice to the City must include a written certification by the new owner and/or operator which:

- A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;
- B. Identifies the specific date on which the transfer is to occur; and
- C. Assumes full responsibility for complying with the existing industrial wastewater discharge permit beginning on the date of the transfer.

Failure to provide advance notice of a transfer renders the industrial wastewater discharge permit void as of the date of facility transfer.

Provided that the notice required above occurred and that there were no significant changes to the manufacturing operation or wastewater discharge and provided that the industry is not subject to categorical standards or requirements, the new owner will be considered an existing user and will be covered by the existing limits and requirements in the previous owner's permit.

7-7-3.12 Industrial Wastewater Discharge Permit Revocation (EPA 3.12)

Industrial wastewater discharge permits may be revoked for, but not limited to, the following reasons:

- A. Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- B. Failure to provide prior notification to the City of changed conditions;
- C. Misrepresentation or failure to fully disclose all relevant facts in the industrial wastewater discharge permit application;
- D. Falsifying self-monitoring reports and/or certification statements;
- E. Tampering with monitoring equipment;
- F. Refusing to allow the City timely access to the facility premises and records;
- G. Failure to meet discharge limitations;
- H. Failure to pay fines;
- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedules;
- K. Failure to complete a wastewater survey or the industrial wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of a permitted facility;

- M. Violation of any pretreatment standard or requirement, or any terms of the industrial wastewater discharge permit or this ordinance; or
- N. If the City has to invoke its emergency provision as cited in Section 7-7-9.7 of this ordinance.

Industrial wastewater discharge permits shall be void upon cessation of operations. All industrial wastewater discharge permits issued to a particular user are void upon the issuance of a new industrial wastewater discharge permit to that user.

7-7-3.13 Industrial Wastewater Discharge Permit Reissuance (EPA 3.13)

A user who is required to have an industrial wastewater discharge permit shall apply for industrial wastewater discharge permit reissuance by submitting a complete industrial wastewater discharge permit application, in accordance with Section 7-7-3.4 of this ordinance, a minimum of 90 days prior to the expiration of the user's existing industrial wastewater discharge permit. A user whose existing industrial wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective industrial wastewater discharge permit until the City issues or denies the new industrial wastewater discharge permit. A user whose existing industrial wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without an industrial wastewater discharge permit.

7-7-4: REPORTING REQUIREMENTS

7-7-4.1 Baseline Monitoring Reports (EPA 4.1)

- A. Within either one hundred and eighty (180) days after the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 CFR 403.6(a)(4) (whichever is later) existing categorical users currently discharging to or scheduled to discharge to the POTW, shall submit to the City a report which contains the information listed in paragraph B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical standard, shall submit to the City a report which contains the information listed in paragraph B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged.
- B. Users described above shall submit the information set forth below.
 - (1) Identifying Information. The name and address of the facility, including the name of the operator and owner.
 - (2) Environmental Permits. A list of any environmental control permits held by or for the facility.
 - (3) Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include

a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

- (4) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).
- (5) Measurement of Pollutants.
 - (a) The pretreatment standards applicable to each regulated process.
 - (b) The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the City) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be collected and analyzed in accordance with procedures set out in Section 7-7-5 of this ordinance.
 - (c) In cases where a pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit sufficient documentation as required by the City or the applicable standard to determine compliance with the standard.
 - (d) Sampling must be performed in accordance with procedures set out in Section 7-7-5 of this ordinance.
- (6) Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional Operation and Maintenance (O&M) and/or additional pretreatment, is required to meet the pretreatment standards and requirements.
- (7) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Section 7-7-4.4 of this ordinance.
- (8) Signature and Certification. All baseline monitoring reports must be signed and certified in accordance with Section 7-7-3.5 of this ordinance.

7-7-4.2 Final Compliance Report (Initial Compliance Report) (EPA 4.2)

- A. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of waste water into the POTW, any user subject to such pretreatment standards and requirements shall submit to the City a report containing the information described in §§7-7-4.1(B)(4), 7-7-4.1(B)(5) and 7-7-4.1(B)(6) of this ordinance. For users subject to equivalent mass or concentration limits established in accordance with the procedures in § 7-7-3.4 E (1) (iv) and E (2) (iv) of this Ordinance , this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with § 7-7-3.4 E (1) (iv) and E (2) (iv) of this ordinance. All sampling shall be done in accordance with § 7-7-5.1 of this ordinance.
- B. For users subject to equivalent mass or concentration limits established by the City in accordance with procedures established in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

7-7-4.3 Periodic Compliance Report (EPA 4.3)

- A. Any user that is required to have an industrial wastewater discharge permit and performs self-monitoring shall comply with all applicable requirements under 40 CFR 403.12 and submit to the City during the months of June and December, unless required on other dates or more frequently by the City, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial wastewater discharge permit. At a minimum, users shall sample their discharge at least twice per year.
- B. The report shall include a record of the concentrations (and mass if specified in the industrial wastewater discharge permit) of the pollutants listed in the industrial wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations and shall also include any additional information required by this ordinance or the industrial wastewater discharge permit. Production data shall be reported if required by the industrial wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a user sampled and analyzed more frequently than what was required by the City or by this ordinance, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.

- C. Any user subject to equivalent mass or concentration limits established by the City or by unit production limits specified in the applicable categorical standards shall report production data as outlined in Section 7-7-4.2 (B).
- D. If the City calculated limits to factor out dilution flows or non-regulated flows, the user will be responsible for providing flow data including regulated process flows, dilution flows and non-regulated flows.
- E. Flows shall be reported on the basis of actual measurement, provided, however, that the City may accept reports of average and maximum flows estimated by verifiable techniques if the City determines that an actual measurement is not feasible.
- F. All wastewater samples shall be representative of discharges and samples shall be taken in accordance with the requirements specified in Section 7-7-5.
- G. The City may require reporting by users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the treatability of the effluent, or determine any other factor which is related to the operation and maintenance of the sewer system.
- H. The City may require self-monitoring by the user or, if requested by the user, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this section. If the City agrees to perform such periodic compliance monitoring, it may charge the user for such monitoring, based upon the costs incurred by the City for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills. The City is under no obligation to perform periodic compliance monitoring for a user.

7-7-4.4 Compliance schedules for meeting applicable pretreatment standards (EPA 4.4)

- A. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).
- B. No increment referred to in paragraph (A) of this section shall exceed 9 months.
- C. Not later than 14 days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established.

D. In no event shall more than 9 months elapse between such progress reports.

7-7-4.5 Notification of Significant Production Changes (EPA 4.5)

Any user operating under an industrial wastewater discharge permit incorporating equivalent mass or concentration limits shall notify the City within two (2) business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not providing a notice of such anticipated change will be required to comply with the existing limits contained in its industrial wastewater discharge permit.

7-7-4.6 Hazardous Waste Notification (EPA 4.6)

A. Any user who commences the discharge of hazardous waste shall notify in writing: the City, the EPA Region 10 Office of Air, Waste, and Toxics Director, and the Idaho Dept. of Health and Welfare, Division of Environmental Quality Remediation Section, of any discharge into the City's sewage collection system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261.

Such notification shall include:

1. The name of the hazardous waste as set forth in 40 CFR Part 261;
2. The EPA Hazardous waste number; and
3. The type of discharge (continuous, batch, or other).
4. If an industrial user discharges more than 100 kilograms of such waste per calendar month to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the industrial user:
 - a. An identification of the hazardous constituents contained in the wastes;
 - b. An estimation of the mass and concentration of such constituents in the waste-stream(s) discharged during that calendar month; and
 - c. An estimation of the mass of constituents in the waste-stream(s) expected to be discharged during the following 12 months.

All notifications must take place no later than one hundred and eighty (180) days after the discharge(s) commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under this ordinance.

The notification requirements of this Section do not apply to pollutants already reported by industrial users under self-monitoring requirements of this ordinance.

B. Dischargers are exempt from the requirements of paragraph A above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous

wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a on-time notification. Subsequent months during which an industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, an industrial user shall notify the City, the EPA Region 10 Office of Air, Waste, and Toxics Director, and the Idaho Dept. of Health and Welfare, Division of Environmental Quality Remediation Section, of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D. In the case of any notification made under this Section, an industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued hereunder, or any applicable Federal or State law.

7-7-4.7 Notice of Potential Problems, Including Accidental Spills, and Slug Loads (EPA 4.7)

A. In case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a slug discharge or slug load as defined in Section 1.3, that might cause potential problems for the City's collection and/or treatment system, an industrial user shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, or an estimate if unknown, and corrective actions taken by the industrial user.

B. Within five (5) days following such discharge, the industrial user shall, unless waived by the City, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future recurrence. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the City's collection system and/or treatment facilities, natural resources, or any other damage to person or property; not shall such notification relieve the industrial user of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

C. A notice shall be permanently posted on an industrial user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A above. Employers shall ensure that all employees who could cause such a discharge to occur are advised of the emergency notification procedures.

D. Significant industrial users shall notify the City immediately of any changes at their facilities affecting the potential for a slug discharge.

7-7-4.8 Non-Compliance/ Repeat Sampling and Reporting (EPA 4.8)

If sampling performed by an industrial user indicates a violation, the user shall notify the City within 24 hours of becoming aware of the violation. The industrial user

shall also repeat the sampling within 5 days and submit the results of the repeat analysis to the City within 30 days after becoming aware of the violation. [Where the City has performed the sampling and analysis in lieu of the industrial user, the City must perform the repeat sampling and analysis unless it notifies the industrial user of the violation and requires the industrial user to perform the repeat analysis]. Re-sampling is not required if:

- A. The City performs sampling at the industrial user at a frequency of at least once per month, or
- B. The City performs sampling at the industrial user between the time when the initial sampling was conducted and the time when the industrial user or the City receives the results of this sampling.

7-7-4.9 Notification of changed discharge (EPA 4.9)

All industrial users shall promptly notify the City in advance of any significant changes in the volume or character of pollutants in their discharge, including significant manufacturing process changes, pretreatment modifications, and the listed or characteristic hazardous wastes for which the user has submitted initial notification under section 7-7-4.6 of this Ordinance. (cf, 40 CFR 403.12 (p)).

- A. The City may require an industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of an industrial wastewater discharge permit application.
- B. The City may issue an industrial wastewater discharge permit or modify an existing industrial wastewater discharge permit in response to changed conditions or anticipated changed conditions.

7-7-4.10 Reports from Un-permitted Users (EPA 4.10)

All users not required to obtain an industrial wastewater discharge permit shall provide appropriate reports to the City as the City may require.

7-7-4.11 Record Keeping (EPA 4.11)

Industrial users subject to the reporting requirements of this ordinance shall retain and make available for inspection and copying all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the industrial user independent of such requirements, and documentation associated with Best Management Practices (BMPs) that may be established in this ordinance. Records shall include the date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses including documentation associated with Best Management Practices. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the industrial user or the City, or where the industrial user has been specifically notified of a longer retention period by the City.

7-7-5: SAMPLING AND ANALYTICAL REQUIREMENTS

7-7-5.1 Sampling Requirements for Users (EPA 5.1)

- A. Except as indicated in Section B and C below, industrial users must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharges and authorization documentation included in the users' files. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with instantaneous limits.
- B. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- C. For sampling required in support of baseline monitoring and 90-day compliance reports required in § 7-7-4.1 (pertaining to BMRs); § 7-7-4.2 (pertaining to FCRs); and § 7-7-4.3 (pertaining to Periodic Compliance Reports for categorical and non-categorical SIUs), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfides and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports, the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.
- D. Samples shall be taken immediately downstream from pretreatment facilities if such exist, immediately downstream from the regulated or manufacturing process if no pretreatment exists, or at a location determined by the City and specified in the user's industrial wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste-stream formula at 40 CFR 403.6(e) in order to evaluate compliance with the Applicable Categorical Pretreatment Standards. For other SIUs, for which the City has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s). Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) the adjusted

limit along with supporting data shall be submitted to the City and included in the industrial user's file.

- E. All sample results shall indicate the time, date and place of sampling and methods of analysis and shall certify that the waste stream sampled is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed more frequently than what was required in its industrial wastewater discharge permit, using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

7-7-5.2 Analytical Requirements (EPA 5.2)

All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

7-7-5.3 City Monitoring of Industrial Users' Wastewater (EPA 5.3)

If the City elects to conduct periodic monitoring of an industrial user's discharge, the City shall follow the same procedures outlined in Sections 7-7-5.1 and 7-7-5.2 as required of industrial users.

7-7-6: COMPLIANCE MONITORING

7-7-6.1 Right of Entry: Inspection and Sampling (EPA 6.1)

The City shall have the right to enter the premises and facilities of any industrial user to determine whether the user is complying with all requirements of this ordinance and any industrial wastewater discharge permit or order issued hereunder. Industrial users shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

- A. Where an industrial user has security measures in force which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the City shall be permitted to enter without delay for the purposes of performing specific responsibilities.
- B. The City shall have the right to set up on the industrial user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the industrial user's operations.
- C. The City may require an industrial user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the industrial user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at a frequency to ensure continuous accuracy.

- D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.
- E. Unreasonable delays in allowing the City access to the industrial user's premises shall be a violation of this ordinance.

7-7-6.2 Monitoring Facilities (EPA 6.2)

The City may require an industrial user, at the user's expense, to install a monitoring station, facilities and/or equipment as necessary to allow inspection, sampling, and flow measurements of each sewer discharge to the City and to ensure compliance with this ordinance. All monitoring facilities shall be constructed and maintained in accordance with all applicable City construction standards and specifications. All devices used to measure wastewater flow and quality shall be calibrated at a frequency that will ensure their continuous accuracy.

There shall be ample room in or near sampling facilities to allow accurate sampling and preparation of samples for analysis. Sampling facilities, including sampling and measuring equipment, shall be maintained at all times in a safe and proper operating condition at the user's expense.

7-7-6.3 Search Warrants (EPA 6.3)

If the City has been refused access to a building, structure or property, or any part thereof and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any industrial wastewater discharge permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the City may seek issuance of a search warrant from the District Court of the Fifth Judicial District, Twin Falls County, Idaho.

7-7-6.4 Vandalism (EPA 6.4)

No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the City's sanitary collection system or treatment facilities.

7-7-7: CONFIDENTIAL INFORMATION (EPA 7.0)

Information and data on an industrial user obtained from reports, surveys, industrial wastewater discharge permit applications, industrial wastewater discharge permits, and monitoring programs, and from City inspection and sampling activities shall be available to the public without restriction, unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the City that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable State law. When requested and demonstrated by the industrial user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret

processes shall not be made available for inspection by the public but shall be made available immediately upon request to governmental agencies for uses related to the **IPDES** program or pretreatment program and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

7-7-8: PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE (EPA 8.0)

The City shall publish annually, in a newspaper(s) of general circulation that provides meaningful public notice within the jurisdiction(s) served by the City, a list of the users which, at any time during the previous twelve (12) months, were in significant non-compliance (SNC) with applicable pretreatment standards and requirements. For the purposes of this provision, an industrial user is in SNC if its violation meets one or more of the following criteria:

- A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter during a six-month (6-month) period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l);
- B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six-month (6-month) period equals or exceeds the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 CFR 403.3(l), multiplied by the applicable TRC [TRC=1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH];
- C. Any other violation of a pretreatment standard or requirement as defined by 40 CFR 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of City personnel or the general public;
- D. Any discharge of a pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge;
- E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;
- F. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules; G. Failure to accurately report non-compliance; or

- H. Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.

7-7-9: ADMINISTRATIVE ENFORCEMENT REMEDIES

7-7-9.1 Notification of Violation (EPA 9.1)

When the City finds that a user has violated or continues to violate any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement, the City may serve upon that user a written Notice of Violation. Within thirty (30) days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the City. Submission of such a plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

7-7-9.2 Consent Orders (EPA 9.2)

The City may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any user responsible for non-compliance. Such documents shall include specific action to be taken by the user to correct the non-compliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 7-7-9.4 and 7-7-9.5 of this ordinance and shall be judicially enforceable.

7-7-9.3 Show Cause Hearing (EPA 9.3)

The City may order a user which has violated or continues to violate any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement, to appear before the City and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least 15 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

7-7-9.4 Compliance Orders (EPA 9.4)

When the City finds that a user has violated or continues to violate any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement, the City may issue an order to the user responsible for the discharge directing that the user come into compliance within a time specified in the order. If the user does not come into compliance within the time specified in the order, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the non-compliance,

including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

7-7-9.5 Cease and Desist Orders (EPA 9.5)

When the City finds that a user has violated (or continues to violate) any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the City may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- A. Immediately comply with all requirements; and
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

7-7-9.6 Administrative Fines (EPA 9.6)

- A. When the City finds that a user has violated or continues to violate any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement, the City may fine such user in an amount not to exceed \$10,000.00. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.
- B. Unpaid charges, fines, and penalties shall, after 30 calendar days, be assessed interest at the same rate and in the same manner as that established by the federal government for the Internal Revenue Service for unpaid taxes and penalties (currently 6% on the date of adoption of this ordinance). A lien against the user's property shall be sought for unpaid charges, fines, and penalties.
- C. Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within 30 days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter within 30 days of receiving the request from the user. In the event the user's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the user. The City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.
- D. Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.

7-7-9.7 Emergency Suspensions (EPA 9.7)

The City may immediately suspend a user's discharge, after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The City may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW or which presents or may present an endangerment to the environment.

- A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the City shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The City shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings in Section 7-7-9.8 of this ordinance are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future recurrence, to the City prior to the date of any show cause or termination hearing under Sections 7-7-9.3 and 7-7-9.8 of this ordinance.

Nothing in this Section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

7-7-9.8 Termination of Discharge (EPA 9.8)

In addition to the provisions in Section 7-7-3.12 of this ordinance, any user that violates the following conditions is subject to discharge termination:

- A. Violation of industrial wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- E. Violation of the pretreatment standards in Section 7-7-2 of this ordinance.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 7-7-9.3 of this ordinance why the proposed action should not be taken. Exercise of this option by the City shall not be a bar to, or a prerequisite for, taking any other action against the user.

7-7-10: JUDICIAL ENFORCEMENT REMEDIES

7-7-10.1 Injunctive Relief (EPA 10.1)

When the City finds that a user has violated, or continues to violate, any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement, the City may petition the District Court of the Fifth Judicial District of the State of Idaho in and for the county of Twin Falls through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the industrial wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.

7-7-10.2 Civil Penalties (EPA 10.2)

- A. A user which has violated or continues to violate any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a maximum civil penalty of \$10,000 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.
- B. The City may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.
- C. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.
- D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.

7-7-10.3 Criminal Prosecution (EPA 10.3)

- A. A user who willfully or negligently violates any provision of this ordinance, an industrial wastewater discharge permit, order issued hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 per violation, per day, or imprisonment for not more than one year, or both.
- B. A user who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least \$1,000.00, or be subject to imprisonment for not more than one year, or both. This penalty

shall be in addition to any other cause of action for personal injury or property damage available under State law.

- C. A user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, industrial wastewater discharge permit, or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine of not more than \$1,000.00 per violation per day, or imprisonment for not more than one year, or both.
- D. In the event of a second conviction, a user shall be punished by a fine of not more than \$1,000.00 per violation per day, or imprisonment for not more than one year, or both.

7-7-10.4 Remedies Non-exclusive (EPA 10.4)

The enforcement remedies provided for in this ordinance are not exclusive. The City may take any, all, or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City may take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any non-compliant user.

7-7-11: SUPPLEMENTAL ENFORCEMENT ACTION

7-7-11.1 Performance Bonds (EPA 11.1)

The City may decline to issue or reissue an industrial wastewater discharge permit to any user which has failed to comply with any provision of this ordinance, a previous industrial wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve consistent compliance.

7-7-11.2 Liability Insurance (EPA 11.2)

The City may decline to issue or reissue an industrial wastewater discharge permit to any user who has failed to comply with any provision of this ordinance, a previous industrial wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

7-7-11.3 Payment of Outstanding Fees and Penalties

The City may decline to issue or reissue an industrial wastewater discharge permit to any user who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous industrial wastewater discharge permit, or order issued hereunder.

7-7-11.4 Water Supply Severance (EPA 11.3)

Whenever a user has violated or continues to violate any provision of this ordinance, an industrial wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, only after the user has satisfactorily demonstrated its ability to comply.

7-7-11.5 Public Nuisances (EPA 11.4)

A violation of any provision of this ordinance, an industrial wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement is hereby declared a public nuisance and shall be corrected or abated as directed by the City. Any person(s) creating a public nuisance shall be subject to the provisions of the City Code governing such nuisances, including reimbursing the City for any costs incurred in removing, abating, or remedying said nuisance.

7-7-11.6 Informant Rewards

The City may pay for information leading to the discovery of non-compliance by a user.

7-7-11.7 Contractor Listing

Users which have not achieved compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by a user found to be in significant non-compliance with pretreatment standards or requirements may be terminated at the discretion of the City.

7-7-12: AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

7-7-12.1 Upset (EPA 12.1)

- A. For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary non-compliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- B. An upset shall constitute an affirmative defense to an action brought for non-compliance with categorical pretreatment standards if the requirements of paragraph C of this Section are met.
- C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;

- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (3) The user has submitted the following information to the City and treatment plant operator within twenty four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
 - (a) A description of the indirect discharge and cause of non-compliance;
 - (b) The period of non-compliance, including exact dates and times or, if not corrected, the anticipated time the non-compliance is expected to continue; and
 - (c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the non-compliance.
- D. In any enforcement proceeding the user seeking to establish the occurrence of an upset shall have the burden of proof.
- E. Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for non-compliance with categorical pretreatment standards.
- F. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of their treatment facilities until the facilities are restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

7-7-12.2 Prohibited Discharge Standards (EPA 12.2)

A user shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibitions in Section 7-7-2.1 A and B(3) through B(7) if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its **IPDES** permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

7-7-12.3 Bypass (EPA 12.3)

- A. For the purposes of this section,
 - (1) "Bypass" means the intentional diversion of waste streams from any portion of a user's treatment facility.
 - (2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- B. A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.
- C. Bypass Notifications
 - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW at least ten (10) days before the date of the bypass, if possible.
 - (2) A user shall submit oral notice to the City of an unanticipated bypass that exceeds applicable pretreatment standards within twenty four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The City may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.
- D. Bypass Prohibition and Conditions
 - (1) Bypass is prohibited, and the City may take an enforcement action against a user for a bypass, unless
 - (a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c) The user submitted notices as required under paragraph (C) of this Section.

(2) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in paragraph (D)(1) of this Section.

7-7-13: WASTEWATER TREATMENT RATES

[RESERVED]

7-7-14: MISCELLANEOUS PROVISIONS

7-7-14.1 Pretreatment Charges and Fees (EPA 14.1)

The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include:

- A. Fees for industrial wastewater discharge permit applications including the cost of processing such applications;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports and certification statements submitted by users;
- C. Fees for reviewing and responding to accidental discharge procedures and construction;
- D. Fees for filing appeals;
- E. Fees to recover administrative and legal costs associated with enforcement activity taken by the City to address industrial user non-compliance; and
- F. Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this ordinance and are separate from all other fees, fines, and penalties chargeable by the City.

7-7-14.2 Severability (EPA 14.2)

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

7-7-14.3 Conflicts (EPA 14.3)

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of the inconsistency or conflict.

7-7-15: EFFECTIVE DATE

This ordinance shall be in full force and effect immediately following its passage, approval and publication, as provided by law.”

SECTION 3: That this ordinance may be published by summary as follows:

“SUMMARY OF
TWIN FALL CITY ORDINANCE NO. ____
SEWER USE ORDINANCE

Section 1 of the ordinance repeals the existing sewer use ordinance, contained in Chapter 7 of Title 7 of the Twin Falls City Code.

Section 2 of the ordinance replaces Chapter 7 of Title 7 of the Twin Falls City Code.

These changes are made to comply with changes required by amendments to the Environmental Protection Agency’s General Pretreatment Rules contained in 40 CFR Parts 9, 122, and 403, in the Federal Register (October 14, 2005), titled Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution. In addition, the ordinance contains several changes to clarify or enhance Twin Falls’ existing regulations and to acknowledge other changes in federal requirements. The Sewer Use Ordinance includes the following topics: GENERAL PROVISIONS: Purpose and Policy, Administration, Definitions, Abbreviations. GENERAL REQUIREMENTS: Prohibited Discharge Standards, General Prohibitions, Specific Prohibitions, Federal Categorical Pretreatment Standards, State Requirements, Local Limits, City’s Right of Revision, Special Agreement, Dilution, Pretreatment Facilities, Deadline for Compliance with Applicable Pretreatment Requirements, Additional Pretreatment Measures, Accidental Spill Prevention Plans, Septic Tank Wastes. INDUSTRIAL WASTEWATER DISCHARGE PERMIT REQUIREMENTS: Industrial Wastewater Discharge Permitting: Existing SIU-Industrial Wastewater Discharge Permitting, New Source and New user-Industrial Wastewater Discharge Permitting, Extra-jurisdictional Users, Industrial Wastewater Discharge Permit Application Contents, Identifying information, Permits, Description of operations, Flow Measurement, Categorical User, Non-Categorical User-Measurements of pollutants, Categorical User, Non-Categorical User-Certification, Compliance Schedule, Signatory and Certification Requirement, Industrial Wastewater Discharge Permit Decisions, Industrial Wastewater Discharge Permit Contents, Industrial Wastewater Discharge Permit Appeals, Industrial Wastewater Discharge Permit Duration, Industrial Wastewater Discharge Permit Modification, Industrial Wastewater Discharge Permit Transfer, Industrial Wastewater Discharge Permit Revocation, Industrial Wastewater Discharge Permit Reissuance. REPORTING REQUIREMENTS: Baseline Monitoring Reports, Identifying Information Environmental Permits, Description of Operations, Flow Measurement, Measurement of Pollutants, Certification, Compliance Schedule, Signature and Certification, Final Compliance Report (Initial Compliance Report), Periodic Compliance Report, Compliance schedules for meeting applicable pretreatment standards, Notification of Significant Production Changes, Hazardous Waste Notification, Notice of Potential Problems, Non-compliance/Repeat Sampling and Reporting, Notification of Changed Discharge, and Record Keeping. SAMPLING AND ANALYTICAL REQUIREMENTS. COMPLIANCE MONITORING. PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE. ADMINISTRATIVE REMEDIES. JUDICIAL REMEDIES, Including civil and criminal penalties. SUPPLEMENTAL ENFORCEMENT ACTION. AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS, AND MISCELLANEOUS PROVISIONS.

Section 3 of the ordinance permits publication by this summary. The full text of this ordinance is available at City Hall.

The foregoing summary is true and complete and provides adequate notice to the public of the principal provisions of the ordinance.


Shayne Nope, City Attorney”

PASSED BY THE CITY COUNCIL , 2020.

SIGNED BY THE MAYOR , 2020.

MAYOR

ATTEST:

DEPUTY CITY CLERK



Date: Monday, October 19, 2020
To: Planning and Zoning Commission
From: Jonathan Spendlove, Planning & Zoning Director

ACTION ITEM

Request:

Request for an Amendment to the Latitude 42 PUD to modify allowed uses and remove restrictions on outdoor storage on property located at 1291 Latitude Circle c/o Gerald Martens. (PZ20-0100) On September 22, 2020, the Planning and Zoning Commission recommended approval to City Council by a vote of 6-0.

Time Estimate:

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

Background:

This is a request to amend the Latitude 42 C-1 PUD Agreement #272. The purpose of the request is to remove the last line "No outside storage as allowed" Latitude 42 PUD Agreement and replace it with the following:

1. Outside Storage / Loading Docks / Trash Containers/ medical gas storage and emergency facilities shall be screened from roadways, residential areas and adjacent properties in conformance with City code. Screening may consist of landscaping, masonry walls, buildings, or fencing. Outside storage shall conform with City Code Section 10-7-14. The amendments are as follows:

Allowed Uses:

1. Outside Storage and display of equipment rental, large implement and heavy equipment for sale or rent on property located adjacent to or clearly visible from US 93.
2. Permitted retail/trade uses operating between the hours of six o'clock (6:00) AM to ten o'clock (10:00) PM.

Prohibited Uses:

Outside storage and display of unfinished materials such as aggregate, lumber, masonry and other similar materials shall not be stored on any lots fronting Latitude Circle within the Latitude 42 Subdivision No. 2, a PUD.

Approval Process:

The Preliminary Presentation for this request was held August 25, 2020.

A public hearing with the Planning and Zoning Commission for this request was on September 22, 2020 the Planning and Zoning Commission unanimously voted to recommend approval to City Council by a vote of 6-0.

Budget Impact:

n/a

Regulatory Impact:

Should the City Council approve the amendment as requested the amended document will be recorded and will be applicable to both Latitude 42 Subdivision No. 1 & 2.

History:

The Latitude 42 C-1 PUD Agreement #272 contains Latitude Subdivision No. 1 recorded in April 2016 and Latitude 42 Subdivision No. 2 recorded in April 2018.

The PUD Agreement was recorded in April 2016. Recently Lots 6-8 in the Latitude 42 Subdivision No. 2, a PUD was approved for a Special Use Permit to allow for storage unit rental.

Analysis:

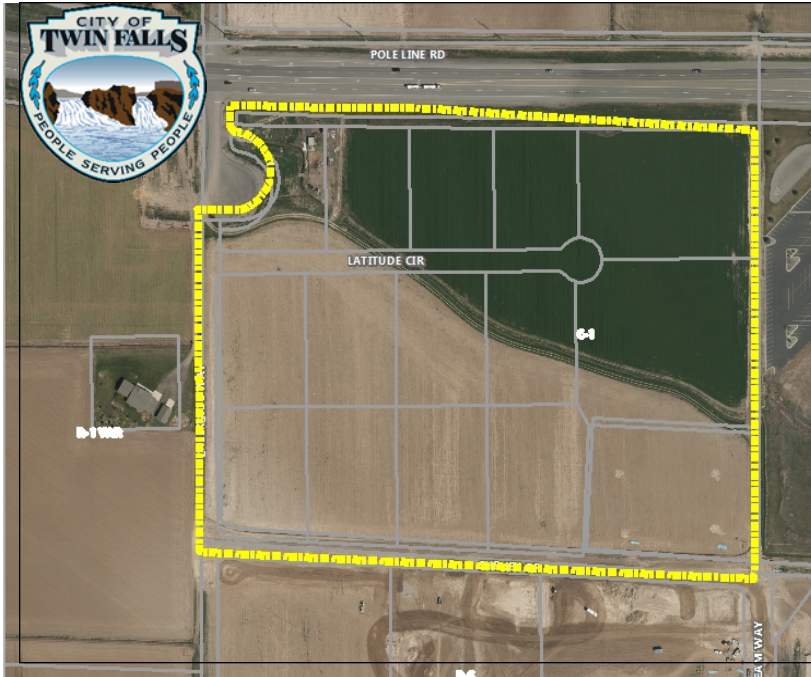
Staff has reviewed the request and does not anticipate any negative impacts related to the changes being requested.

Conclusion:

The Commission is tasked with making a recommendation to the City Council. You may recommend approval as requested; recommend a modification or recommend denial.

Attachments:

1. PZ20-00100 Public Hearing Staff Report
2. Vicinity Map
3. Narrative_2
4. Draft_2 Latitude 42 PUD Amendment 2



Comprehensive Staff Report

To: Planning & Zoning Commission
Presenter: Lisa Strickland, City Planner

Request: **Preliminary Presentation** for a request to amend PUD #272 to modify allowed uses and remove restrictions on outdoor storage on property located at 1291 Latitude Circle

Application: PZ20-00100

Applicant & Representative:

Gerald Martens
 621 N College Rd Ste 100
 Twin Falls, ID 83301

OutsPublic Hearing: September 22, 2020

Analysis:

This is a preliminary presentation for an amendment to the Latitude 42 C-1 PUD Agreement #272.

The purpose of the request is to remove the last line "No outside storage is allowed" Latitude 42 PUD Agreement and replace it with the following:

1. Outside Storage / Loading Docks / Trash Containers/ medical gas storage and emergency facilities shall be screened from roadways, residential areas and adjacent properties in conformance with City code. Screening may consist of landscaping, masonry walls, buildings, or fencing. Outside storage shall conform with City Code Section 10-7-14.

The request will also modify the allowed uses and prohibited uses as follows:

1. Outside storage and display of equipment rental, large implement and heavy equipment for sale or rent on property located adjacent to or clearly visible from US 93.
2. Permitted retail/trade uses operating between the hours of six

o'clock (6:00) A.M. to ten o'clock (10:00) P.M.

1. Outside storage and display of unfinished materials such as aggregate, lumber, masonry, and other similar materials shall not be stored on any lots fronting Latitude Circle within the Latitude 42 Subdivision No. 2, a PUD

History:

The Latitude 42 C-1 PUD Agreement #272 contains Latitude Subdivision No. 1 recorded in April 2016 and Latitude 42 Subdivision No. 2 recorded in April 2018.

The PUD Agreement was recorded in April 2016. Recently Lots 6-8 in the Latitude 42 Subdivision No. 2, a PUD was approved for a Special Use Permit to allow for storage unit rental.

Approval Process:

The Preliminary Presentation for this request was held August 25, 2020. A public hearing shall then be held before the Commission for a recommendation to City Council to approve, approve with conditions or deny the amendment request.

Applicable Regulations or Codes:

Should the City Council approve the amendment as requested the amended document will be recorded and will be applicable to both Latitude 42 Subdivision No. 1 & 2.

Comprehensive Plan Compliance:

The 2016 Comprehensive Plan "Grow With Us" designates this area as "Commercial" and the request is in compliance with the plan.

Conclusion:

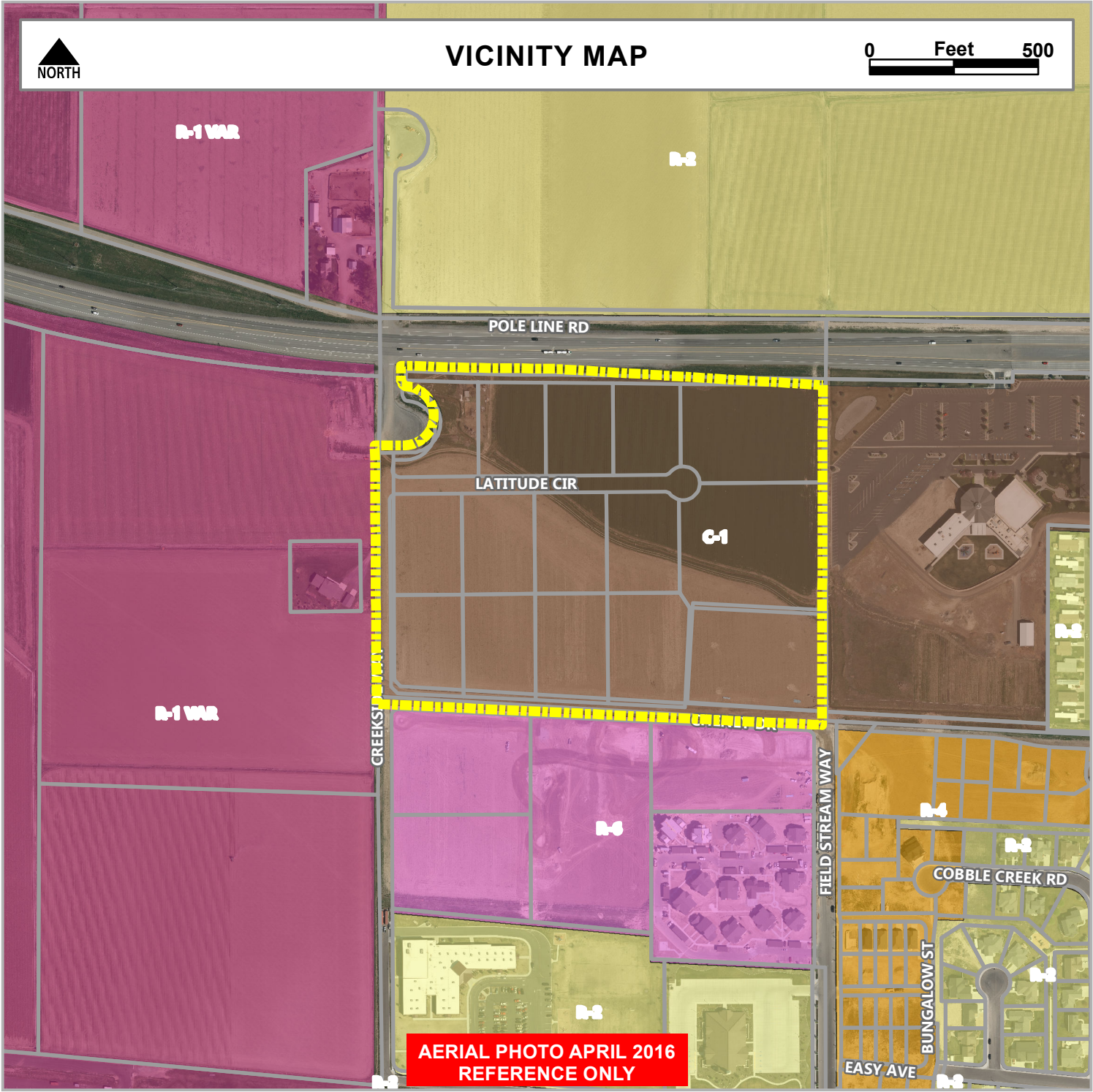
The Commission is tasked with making a recommendation to the City Council. You may recommend approval as requested; recommend a modification or recommend denial.

Attachments

1. Vicinity Map
2. Narrative
3. Latitude 42 PUD #272
4. PUD Amendment Agreement

VICINITY MAP

0 Feet 500



- | | | | |
|--|---------|---|-----|
|  | C-1 |  | R-4 |
|  | R-1 VAR |  | R-6 |
|  | R-2 | | |

Reason for Request

The purpose of the request is to remove the last line “No outside storage is allowed” from section V-D-2 of the Latitude 42 PUD Agreement and replace it with the following:

1. Outside Storage / Loading Docks / Trash Containers. Loading docks, trash containers, medical gas storage and emergency facilities shall be screened from roadways, residential areas and adjacent properties in conformance with City code. Screening may consist of landscaping, masonry walls, buildings, or fencing. Outside storage shall conform with City Code Section 10-7-14.

The request is to modify the allowed uses as follows:

1. Outside storage and display of equipment rental, large implement and heavy equipment for sale or rent on property located adjacent to or clearly visible from US 93.
2. Permitted retail/trade uses operating between the hours of six o'clock (6:00) A.M. to ten o'clock (10:00) P.M.

The request is to modify the prohibited uses as follows:

1. Outside storage and display of unfinished materials such as aggregate, lumber, masonry, and other similar materials shall not be stored on any lots fronting Latitude Circle within the Latitude 42 Subdivision No. 2, a PUD

The location, adjacent or clearly visible from US 93 is appropriate location for storage and display of vehicles, construction equipment, and farm equipment.

The sale, rental and display of vehicles, construction equipment, and farm equipment will have no negative impact on adjacent properties.

The storage of this equipment will be on a paved surface eliminating any potential for dust. Noise, glare, and odor will be extremely minimal

AMENDMENT TO C-1 PLANNED UNIT DEVELOPMENT AGREEMENT

LATITUDE 42, PUD

The Amendment to the Agreement is made and entered into as of the _____ day of _____, 20____, by and between the CITY OF TWIN FALLS, a Municipal Corporation (hereinafter called "City") and James and Anna McCormick, Gary Nelson, Blass, Inc., Gary Slette, Gerald Martens, Evan Robertson, Dirk Gibson, Daniel Konen, Stephen George, Kirby Dahl (hereinafter called "Developer"), whose address is PO Box 6004, Twin Falls, Idaho 83303-6004.

RECITALS:

WHEREAS, the City and Developer entered a C-1 Planned Unit Development Agreement for the development of Latitude 42, PUD. dated March 28, 2016.

WHEREAS, the City and Developer amended C-1 Planned Unit Development Agreement for the development of Latitude 42, PUD, dated September 28, 2016.

WHEREAS, the C-1 Planned Unit Development agreement identifies areas to be developed within Latitude 42, PUD.

WHEREAS, the parties hereto desire to amend the above referenced C-1 Planned Unit Development agreement regarding the development of paragraph V-D-2 of the Developer's property in Latitude 42, PUD.

WHEREAS, The City, by and through its City Council on _____, has agreed to paragraph V-D-2 subject to certain terms, conditions and understandings, which terms, conditions and understandings are the subject of the Agreement and are stated as follows:

2. Outside Storage / Loading Docks/Trash Containers. Loading docks, trash containers, medical gas storage and emergency facilities shall be screened from roadways, residential areas and adjacent properties in conformance with City code. Screening may consist of landscaping, masonry walls, buildings, or fencing. No outside storage is allowed.

NOW, THEREFORE, the parties hereto, agree to amend the PUD agreement as follows:

Remove the last line "No outside storage is allowed".

Permitted Uses

1. Outside Storage / Loading Docks / Trash Containers. Loading docks, trash containers, medical gas storage and emergency facilities shall be screened from roadways, residential areas and adjacent properties in conformance with City code. Screening may consist of landscaping, masonry walls, buildings, or fencing. Outside storage shall conform with City Code Section 10-7-14.

2. Outside storage and display of equipment rental, large implement and heavy equipment for sale or rent on property located adjacent to or clearly visible from US 93.
3. Permitted retail/trade uses operating between the hours of six o'clock (6:00) A.M. to ten o'clock (10:00) P.M.

Prohibited Uses

1. Outside storage and display of unfinished materials such as aggregate, lumber, masonry, and other similar materials shall not be stored on any lots fronting Latitude Circle within the Latitude 42 Subdivision No. 2, a PUD

IN WITNESS WHEREOF, this Amendment Agreement has been executed on the day and year first above written.

City of Twin Falls,
a Municipal Corporation

Developer,

By: _____
Suzanne Hawkins, Mayor

By: _____
Gerald Martens, Managing Member

STATE OF IDAHO)
 : ss.
COUNTY OF TWIN FALLS)

On this _____ day of _____, 20____, before me, a Notary Public in and for said County and State, personally appeared Suzanne Hawkins, Mayor of Twin Falls, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at _____ Idaho
My commission expires: _____

STATE OF IDAHO)
 : ss.
COUNTY OF TWIN FALLS)

On this _____ day of _____, 20____, before me, a Notary Public in and for said County and State, personally appeared Gerald Martens, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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

NOTARY PUBLIC FOR IDAHO
Residing at _____ Idaho
My commission expires: _____



Date: Monday, October 19, 2020
To: Planning and Zoning Commission
From: Jonathan Spendlove, Planning & Zoning Director

ACTION ITEM

Request:

Request to vacate a platted easement on property located at 727 Aspenwood Lane c/o Tim T. Mingo. (PZ20-0105) On September 22, 2020, the Planning and Zoning Commission recommended approval to City Council by a vote of 6-0.

Time Estimate:

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

Background:

This is a request to vacate a portion of a platted utility and irrigation easement. The purpose of the request is so the applicant can have room on his property to construct an accessory building along the westerly property line.

Approval Process:

All procedures will follow the process as described in TF City Code: 10-16-1

Vacations & Dedications require a public hearing before City Council where the public and the applicant will have the opportunity to make a presentation, ask questions, or voice their concerns. A public hearing with the Planning and Zoning Commission for this request was on September 25, 2020 the Planning and Zoning Commission unanimously voted to recommend approval to City Council by a vote of 6-0.

Budget Impact:

n/a

Regulatory Impact:

Approval of this request will remove the limitation, or entitlement, for the specific area, as described on the Plat. This area will become private property, and subject to current rules and regulations for taxes, zoning code compliance, and development.

History:

The property is located within the Green Tree Estates platted in 1980.

Analysis:

Staff has reviewed this request and does not anticipate negative impacts if approved.

Conclusion:

Should the Commission recommend approval to the City Council as presented, staff recommends approval be subject to the following conditions:

1. Subject to continued compliance with all local, state, and federal code requirements and other standards as applicable.
2. Subject to retaining 7 ½ ft of the 15' easement per the Century Link request.

Attachments:

1. PZ20-0105 VAC Staff Report
2. Vicinity Map
3. Narrative
4. Green Tree Estates Subdivision
5. Site Plan
6. Exhibit
7. Utility Company Letters
8. Photo



Comprehensive Staff Report

To: Planning & Zoning Commission

Presenter: Lisa Strickland, City Planner

Request: To **Vacate** a portion of a platted utility and irrigation easement on property located at 727 Aspenwood Lane.

Application: PZ20-0105

Applicant & Representative:

Tim Mingo
727 Aspenwood Lane
Twin Falls, ID 83301

Public Hearing: September 22, 2020

Analysis:

This is a request to vacate a portion of a platted utility and irrigation easement. The purpose of the request is so the applicant can have room on his property to construct an accessory building along the westerly property line.

Approval Process:

All procedures will follow the process as described in TF City Code: 10-16-1

Vacations & Dedications require a public hearing before the Planning Commission where the public and the applicant will have the opportunity to make a presentation, ask questions, or voice their concerns. The Planning & Zoning Commission will make a recommendation to the City Council that the vacation be granted, or it may recommend a modification to the vacation, or it may recommend that the vacation be denied.

Comprehensive Plan Compliance

The 2016 Comprehensive Plan "Grow With Us" designates this area as Town Neighborhood. The request complies with City Comprehensive Plans.

Applicable Regulations or Codes:

Approval of this request will remove the limitation, or entitlement, for the specific area, as described on the Plat. This area will become private property, and subject to current rules and regulations for taxes, zoning code compliance, and development.

Analysis/Possible Impacts

Staff has reviewed this request and does not anticipate negative impacts if approved.

Conclusions:

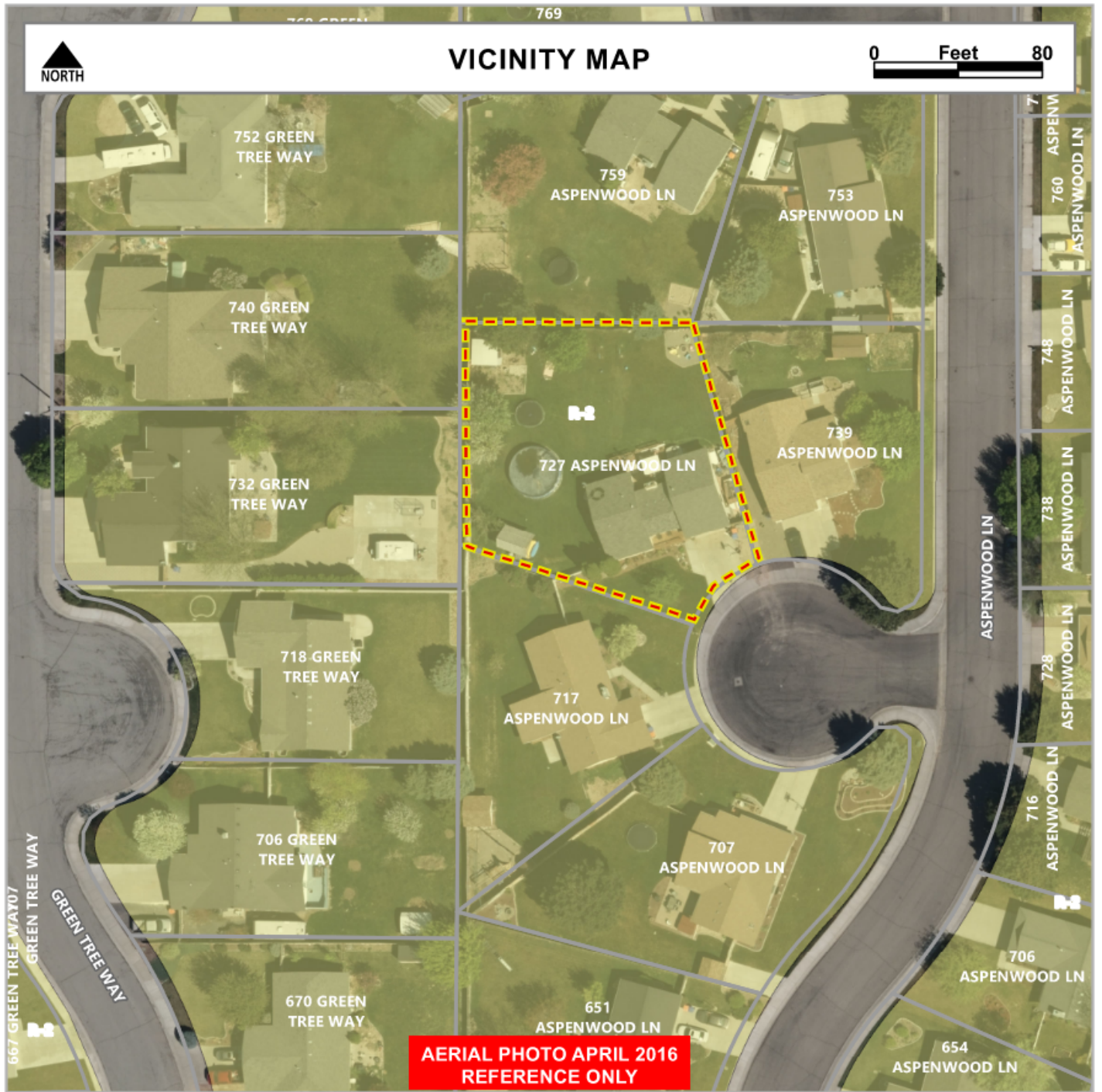
Should the Commission recommend approval to the City Council as presented, staff recommends approval be subject to the following conditions:

1. Subject to continued compliance with all local, state, and federal code requirements and other standards as applicable.
2. Subject to retaining 7 ½ ft of the 15' easement per the Century Link request.

2. Narrative
3. Rezone Exhibit
4. Elevations
5. Photos

Attachments:

1. Vicinity Map



 **R-2**

Current Zoning: R-2

Comprehensive Plan: Town Neighborhood

Existing Land Use: Undeveloped

Proposed Land Use: Residential

Surrounding Zoning Designations & Land Use(s)

North: Residential

East: Aspenwood Lane

South: Residential

West: Residential

Applicable Regulations

10-1-4, 10-1-5, 10-4-4, 10-16-1

Hi, my name is Tim Mingo, I am requesting partial vacation of an easement on my property in order to build a storage shed. Enclosed is a detailed map of the location of the shed and the area of the easement requested highlighted in red.

After reviewing the purpose of the easement, I find that there is no effect to adjoining properties.

727 ASPENWOOD LN

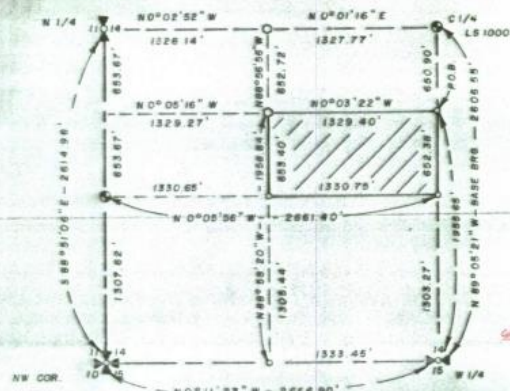
Thank you for your consideration.

Tim mingo.

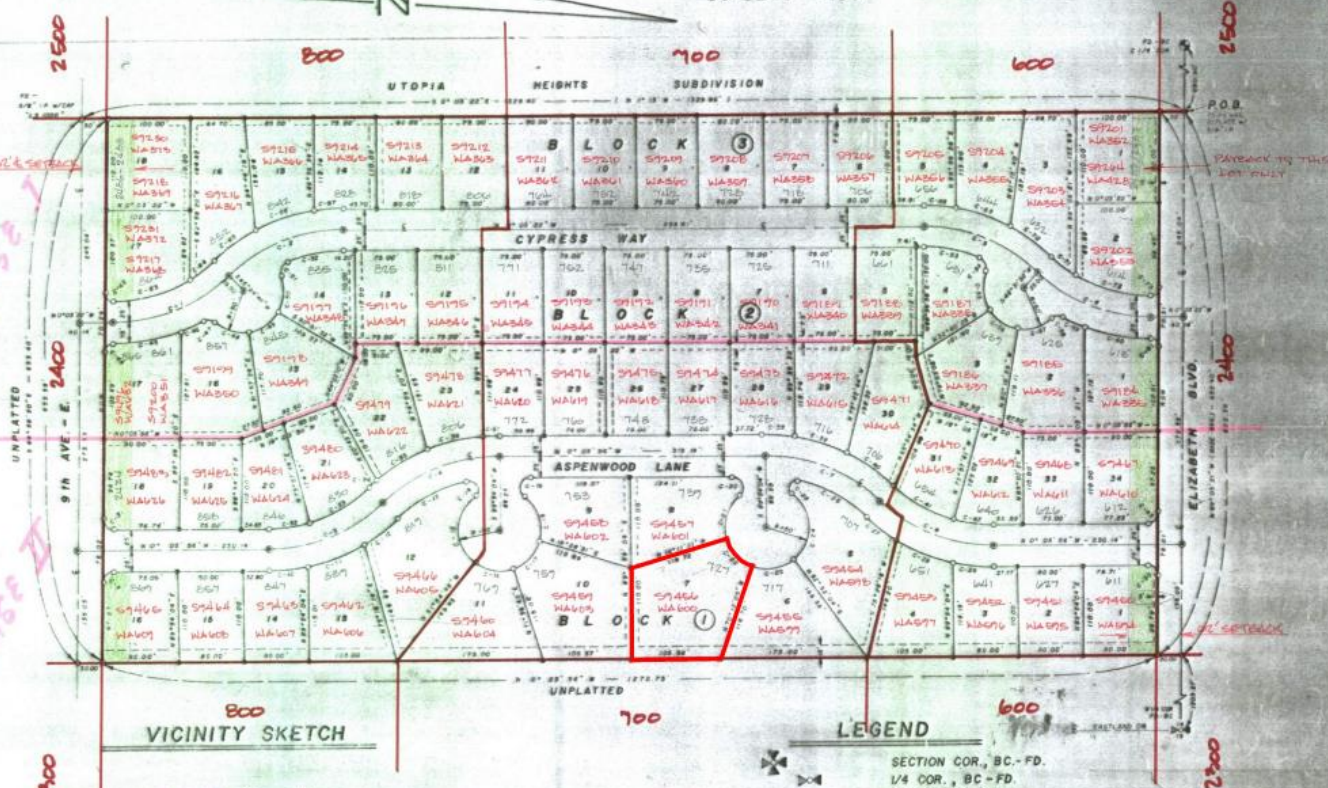
A handwritten signature in blue ink, appearing to read "Tim Mingo", with a long horizontal flourish extending to the right.

GREEN TREE ESTATES

SCALE: 1" = 100'



CURVE DATA

[illegible]

VICINITY SKETCH



LEGEND

- SECTION COR., BC.-FD.
1/4 COR., BC.-FD.
BRASS CAP.-FD.
5/8" I.P. - FD., LS 1000
RECORDED
3/4" I.P. w/CAP-SET
5/8" I.P. w/CAP-SET
1/2" I.P. w/CAP-SET
SUBDIVISION BOUNDARY
LOT LINE
UTILITY & IRRIGATION EASEMENT

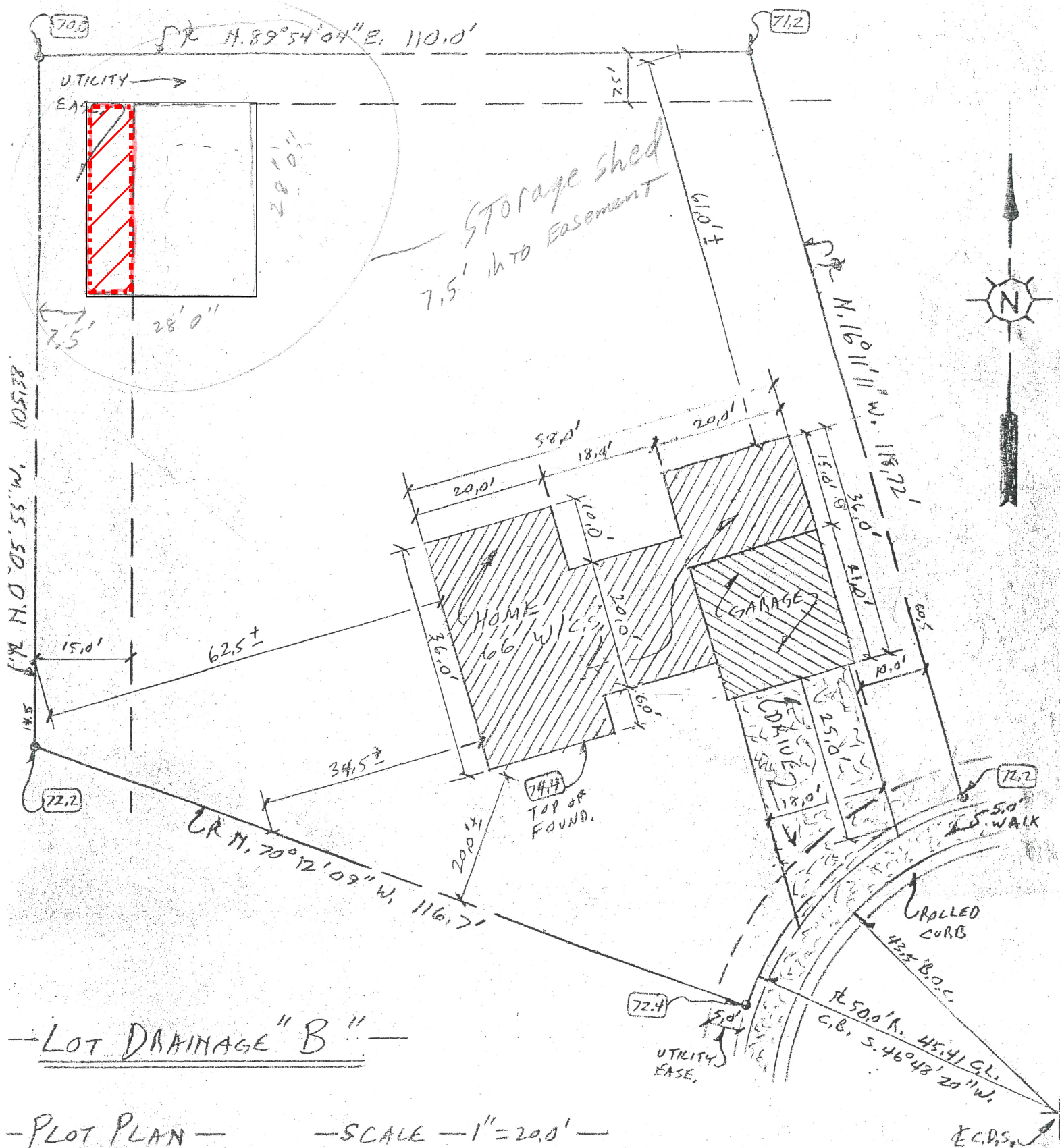
LEE AND REEVES
CONSULTING ENGINEERS
TWIN FALLS, IDAHO

DATE: JULY, 1980

JOB NO. 8026

SHEET 1 OF 2

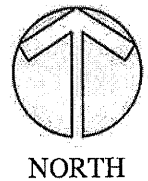
LOT 7 BLOCK 1
GREEN TREE ESTATES
TWIN FALLS, IDAHO - 83301
727 ASPENWOOD LANE



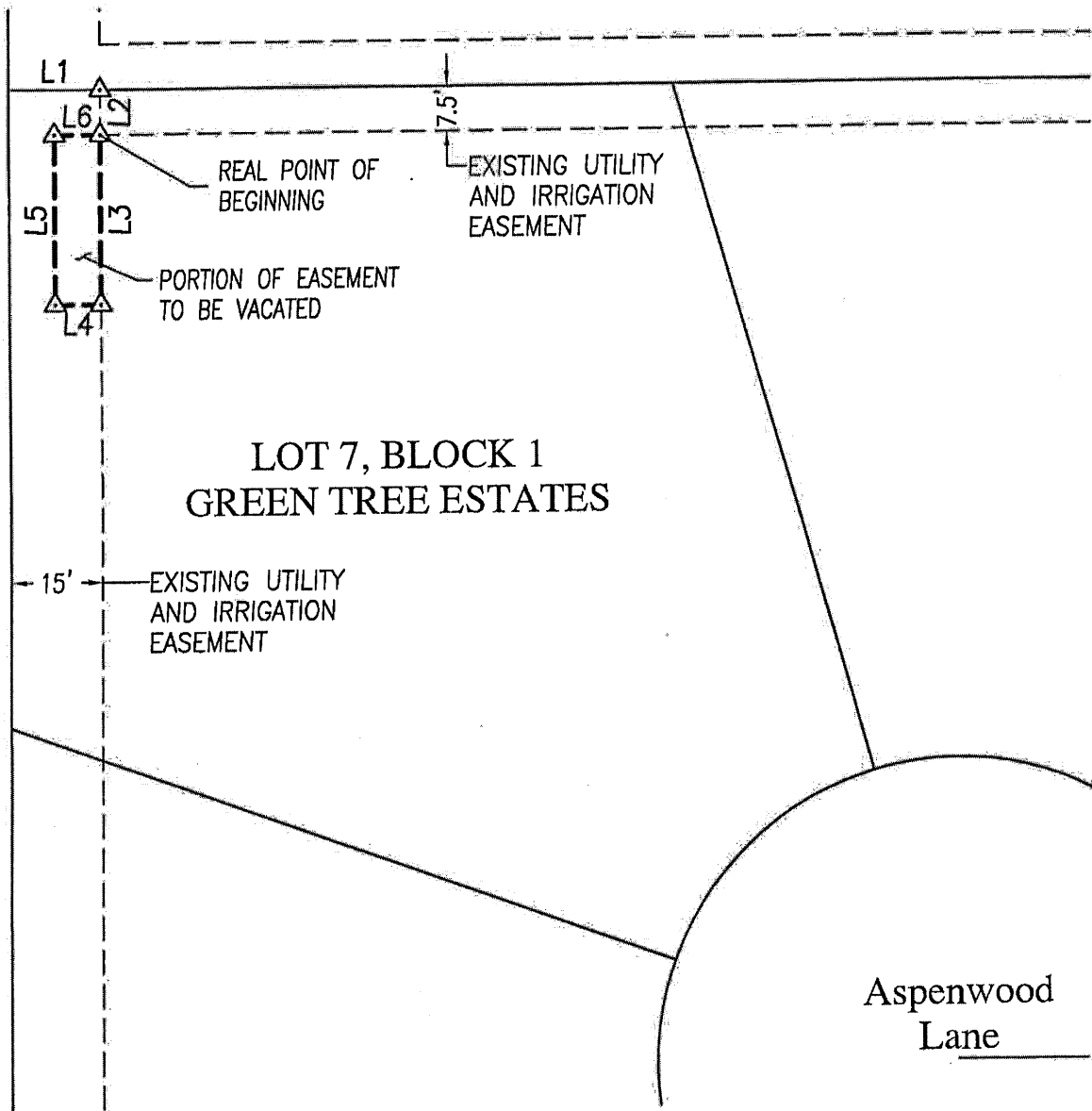
Line Table

LINE #	BEARING	DISTANCE
L1	N89°54'04"E	15.00'
L2	S0°05'56"E	7.50'
L3	S0°05'56"E	28.00'
L4	S89°54'04"W	7.50'
L5	N0°05'56"W	28.00'
L6	N89°54'04"E	7.50'

Located In
A Portion of
Lot 7 Block 1
Green Tree Estates



In
W² SE⁴ NW⁴, Section 14
Township 10 South, Range 17 East
Boise Meridian
Twin Falls County, Idaho
2020



PRELIMINARY

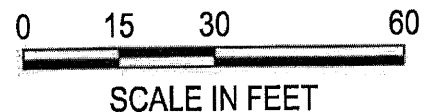


EXHIBIT
PROPOSED EASEMENT VACTION
TWIN FALLS, IDAHO

EHM Engineers, Inc.
BUILDING THE FUTURE ON A FOUNDATION OF EXCELLENCE
Engineers / Surveyors / Planners
621 North College Road, Suite 100 Twin Falls, Idaho, 83301
p (208)-734-4888 fax (208)-734-6049 web: ehmine.com

JOB NO.: 209-2
APPROVED
DESIGN
DRAWN
DATE JUNE 202
SCALE SHOWN
SHEET NO.: 1



CenturyLink
Brad McNew
Construction Project Administrator
216 South Park Ave
Twin Falls, Id. 83301

Office (208) 736-8760

Facsimile (208) 736-8755

July 20, 2020

Tim Mingo
727 Aspenwood Ln.
Twin Falls, Id. 83301

RE: Green Tree Estates
Vacation of 15' utility easement
Lot 27 Blk 1, Section 14, T10S, R17E

To whom it may concern:

Reference is made to your request for CenturyLink to vacate a portion of the 15' utility easement lot 27 Blk 1 located in the City of Twin Falls, County of Twin Falls, State of Idaho. Centurylink appears to have no facilities along this portion of ground and would vacate 7 ½' of the easement, retaining the 7 ½' on said Westerly lot line. If existing utilities need to be vacated construction charges would apply for relocation of facilities.

Please call me if you have any questions.

Sincerely,

Brad McNew



TWIN FALLS CANAL COMPANY

357 6TH AVE WEST
POST OFFICE BOX 326
TWIN FALLS, IDAHO 83303-0326



July 23, 2020

Timoth Mingo
727 Aspenwood LN
Twin Falls, ID 83301

RE: Easement Vacation

Dear Tim,

I have reviewed your property at 727 Aspenwood Lane concerning an easement vacation. This Letter is to inform you that the Twin Falls Canal Company has no facilities in the area and therefore has no issues with the proposed vacation of the easement.

If you have any questions, please contact me at 733-6731.

Sincerely,

Jay Barlogi
Twin Falls Canal Company



August 5, 2020

Sent via email to tim@brizee.com

Tim Mingo
727 Aspenwood Ln.
Twin Falls, ID 83301

Re: Relinquishment of a portion of Public Utility Easement (PUE) located in Lot 7 Block 1 of Green Tree Estates Subdivision in Twin Falls County, Idaho.

Dear Tim:

This is in response to the relinquishment application received by Idaho Power Company on August 4, 2020, regarding the possible partial relinquishment of the above noted PUE. The attached maps more specifically identifies the "easement area".

Idaho Power's review of the relinquishment application indicated that there are no facilities within the above noted easement area. As such, Idaho Power agrees to relinquish the public utility easement within the area described in the attached documents.

Thank you once again for providing Idaho Power Company the opportunity to review and comment upon the subject petition for relinquishment.

Sincerely,

Krista Englund
Assoc. Real Estate Specialist
Land Management and Permitting Department
Corporate Real Estate
Idaho Power Company

208-388-2245
kenglund@idahopower.com

PARTIAL EASEMENT VACATION

Intermountain Gas Company relinquishes any and all of their rights to the following described easement. The west lot line easement on Lot 7, Block 1 of the Green Tree Estates a part of the SE ¼, NW ¼ of Sec. 14 T10S, R17E. BM. Twin Falls County, Idaho.

INTERMOUNTAIN GAS COMPANY

By: _____

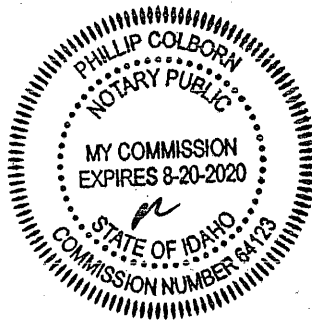
Name: _____

Title: Pocatello District Manager

STATE OF IDAHO)
)
COUNTY OF ADA)

On this 29 day of July, in the year of 2020, before me, the undersigned, personally appeared James Murphy, known to me to be the person whose name is subscribed to the within instrument, who, being by me first duly sworn, did depose and say that he is Pocatello District Manager of Intermountain Gas Company and the he executed the foregoing instrument on behalf of said firm for the use and purposes stated therein.

IN WITNESS WHEREOF, I have se my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho

Residing at: Bannock County

Commission Expires: 20 Aug, 2020

