

COUNCIL MEMBERS:

SHAWN BARIGAR	DON HALL	SUZANNE HAWKINS	GREGORY LANTING	JIM MUNN, JR.	REBECCA MILLS SOJKA	CHRIS TALKINGTON
<i>Vice Mayor</i>			<i>Mayor</i>			



**AGENDA**  
Meeting of the Twin Falls City Council  
**December 17, 2012**  
City Council Chambers  
305 3<sup>rd</sup> Avenue East  
Twin Falls, Idaho

**6:00 P.M.**

PLEDGE OF ALLEGIANCE TO THE FLAG  
CONFIRMATION OF QUORUM  
INTRODUCTION OF STAFF  
CONSIDERATION OF THE AMENDMENTS TO THE AGENDA:  
PROCLAMATIONS: None

AGENDA ITEMS	Purpose	By:
<b>I. <u>CONSENT CALENDAR:</u></b> 1. Consideration of a request to approve the accounts payable for December 11 – 17, 2012. 2. Consideration of a request to approve the December 3, 2012 and December 10, 2012, City Council Minutes.	<u>Action</u>	<u>Staff Report</u> Sharon Bryan L. Sanchez
<b>II. <u>ITEMS FOR CONSIDERATION:</u></b> 1. Consideration of a request to amend the current lease agreement between the City of Twin Falls and McKean Racing, LLC. 2. Consideration of a request to amend the Twin Falls City Fireworks Ordinance. <i>Proposed Ordinance #3042</i> 3. Presentation of the annual impact fee report from the Development Impact Fee Advisory Committee. 4. Public input and/or items from the City Manager and City Council.	Action  Action  Presentation	Travis Rothweiler  Anthony Barnhart  Mitch Humble
<b>III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u></b>		
<b>IV. <u>PUBLIC HEARINGS:</u>            6:00 - NONE</b>		
<b>V. <u>ADJOURNMENT:</u></b>		

*\*Any person(s) needing special accommodations to participate in the above noticed meeting should contact Leila Sanchez at (208) 735-7287 at least two working days before the meeting.*

### Twin Falls City Council-Public Hearing Procedures for Zoning Requests

1. Prior to opening the first Public Hearing of the session, the Mayor shall review the public hearing procedures.
  2. Individuals wishing to testify or speak before the City Council shall wait to be recognized by the Mayor, approach the microphone/podium, state their name and address, then proceed with their comments. Following their statements, they shall write their name and address on the record sheet(s) provided by the City Clerk. The City Clerk shall make an audio recording of the Public Hearing.
  3. 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.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.
  4. A City Staff Report shall summarize the application and history of the request.
    - The City Council may ask questions of staff or the applicant pertaining to the request.
  5. The general public will then be given the opportunity to provide their testimony regarding the request. The Mayor may limit public testimony to no less than two minutes per person.
    - Five or more individuals, having received personal public notice of the application under consideration, may select 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. The spokesperson shall be limited to 15 minutes.
    - Written comments, including e-mail, shall be either read into the record or displayed to the public on the overhead projector.
    - Following the Public Testimony, the applicant is permitted five (5) minutes to respond to Public Testimony.
  6. Following the Public Testimony and Applicant's response, the hearing shall continue. The City Council, as recognized by the Mayor, shall be allowed to question the Applicant, Staff or anyone who has testified. The Mayor may again establish time limits.
  7. The Mayor shall close the Public Hearing. The City Council 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.



December 17, 2012, City Council Meeting

To: Honorable Mayor and City Council

From: Travis Rothweiler, City Manager

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**Request:**

This is a request to amend the current lease agreement between the City of Twin Falls and McKean Racing, LLC.

**Time Estimate:**

This presentation will take approximately 5 minutes, plus time for questions from Council.

**Background:**

The City entered into a lease agreement with McKean Racing, LLC for the Magic Valley Speedway land in 2007. The agreement calls for rent payments to the City based on "the number of persons paying admittance fees for all activities held on the leased premises." The agreement is silent on tickets that are complimentary, or distributed for free, by McKean Racing. The proposed addendum to the contract was proposed by Mr. McKean, and imposes rent of ½ the amount per attendee on any complimentary tickets.

**Approval Process:**

A simple majority of voting Council members is necessary to modify the existing lease agreement.

**Budget Impact:**

In 2012, there were 4,079 free tickets redeemed. As the lease agreement now stands, the City did not receive any rent for these tickets. At the proposed rate of one half of the per attendee price for complimentary tickets, the City would have receive additional rent monies of \$1,040.15.

**Regulatory Impact:**

There is no regulatory impact.

**Conclusion:**

Staff recommends that Council approve the addendum to the lease agreement with McKean Racing, and authorize the Mayor to sign.

**Attachments:**

Original lease agreement

Addendum to lease agreement

RECORDED FOR:

TWIN FALLS TITLE

4:28:58 pm 08-01-2007

2007-019155

NO. PAGES: 14

FEE: \$42.00

KRISTINA GLASCOCK  
COUNTY CLERK

DEPUTY: CKULIK

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made effective the 1st day of March, 2007, by and between the CITY OF TWIN FALLS, IDAHO, hereinafter referred to as "Lessor" and **MCKEAN RACING, LLC**, hereinafter referred to as "Lessee."

The parties hereto agree as follows:

1. **Description of Property.** In consideration of the rental specified below, the Lessor hereby leases to the Lessee the following described real property:

That portion of the Northeast Quarter of Section 7, Township 11 South, Range 17 East, Boise Meridian, lying south of the Highline Canal and further described as follows:

BEGINNING at the intersection of the South side of the Highline Canal and the centerline of Grandview Drive South;

THENCE, South 84°06'34" W. 30.00 feet to the True Point of Beginning;

THENCE, South 5°53'26" East 133.17 feet to the Beginning of a curve to the right with a radius of 924.93 feet;

THENCE, along said curve a distance of 1571.19 feet through a central angle of 97° 19'45";

THENCE, North a distance of 1620 feet more or less to the South side of the Highline Canal;

THENCE, Southeasterly along the South line of the Highline Canal a distance of 1010 feet more or less to the True Point of Beginning.

Containing 25.04 acres, more or less.

hereinafter called the "Premises."

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

3. **Use of Premises.** The intent of this Lease is permit Lessee to utilize the Premises for non-aviation uses, which uses shall not conflict with the use of the remaining Airport Property for commercial and general aviation purposes. During the term of this Lease, the Premises shall be used exclusively for the purpose of constructing and locating thereon structures and improvements normally associated with a motorized-vehicle racing track. The leased Premises may also be used for other appropriate outdoor activity, including but not limited to, group picnics, chariot races, bicycle races, concerts, and animal racing. Notwithstanding the foregoing, all activities conducted on the leased Premises, whether or not organized and operated by the Lessee shall comply with all applicable federal and state laws, all regulations promulgated by any regulatory agency having jurisdiction over such activities, the Rules and Regulations and Minimum Standards of the Airport, Twin Falls City ordinances and Twin Falls County

ordinances, all as currently in existence or as hereafter adopted. Lessee shall not carry on or permit to be carried on upon the Premises, any unlawful business or activity or permit any person to use any part of the Premises for residential use.

4. **Public Facilities.** Lessee shall at all times provide adequate sanitary facilities upon the Premises, and shall keep the same in a clean and sanitary condition. The type, location and number of toilets and other sanitary facilities shall meet all applicable requirements of the City of Twin Falls, Twin Falls County and all other governmental entities having jurisdiction of the Premises and activities conducted on the Premises.

5. **Term of Lease.** The term of this Lease shall commence on the 1st day of March, 2007, and end on the last day of February, 2031. In the event Lessee shall continue to occupy the leased Premises beyond the initial term of the Lease, continued occupancy of the Premises by Lessee shall not constitute a renewal or extension of the Lease, but shall create a tenancy from month to month on the same terms and conditions of the expired term, which tenancy may be terminated at any time by Lessor giving thirty (30) days written notice to Lessee.

6. **Rent.**

A. **Base Rent.** Lessee shall pay Lessor annually a Base Rent of \$4,000.00 for the Premises, which amount is due and payable in advance on the first day of March and each March 1<sup>st</sup> thereafter during the term of this Lease. The Base Rent may from time to time be adjusted pursuant to Paragraph C.

B. **Additional Rent.** At the end of the first twelve (12) months of the leased term, and at the end of each succeeding twelve-month-period, Lessee shall prepare and present to the Lessor an accounting of the number of persons paying admittance fees for all activities held on the leased Premises during the immediately preceding twelve-month-period. The number of admittees shall then be multiplied by \$.450 and if the sum exceeds \$4000.00, the excess shall be deemed additional rent for said twelve-month-period, which amount shall be due and payable to Lessor within thirty (30) days from the end of the twelve-month-period to which it relates. The Additional Rent multiplier may from time to time be adjusted pursuant to Paragraph C.

C. **Rent Escalation.** The parties agree that the Base Rent and Additional Rent for the Premises shall be subject to annual escalation on March 1st of each year following the commencement of this Lease. For purposes of determining future rents, the Base Rent and Additional rent payments listed above shall be effective March 1, 2007. (Annual index base period for 2005 of 195.3 = 100). The annual change in the rent payment shall be directly proportional to the percent change in the Annual Consumer Price Index (CPI) for all urban consumers (CPI-U, U. S. City Average, all items, unadjusted basis, index base period (1982-84=100)). For example, a change in the rent payment effective March 1, 2007 would have been calculated as follows:

Annual CPI for 2006	201.6
Less Annual CPI for 2005	195.3
Equals index point change	6.3
Divided by Annual CPI for December 2005	195.3
Equals X	0.032
Result X multiplied by 100	0.032 X 100
Equals percent change of	3.2%

Future rents shall be calculated in accordance with the above formula. The rent payment shall be increased each March 1 if there is a positive percent change, but never decreased; provided,

however, if the rent increase in any given year exceeds five percent (5%), then the proposed rent increase shall be presented to the City Council for hearing and approval pursuant to I.C. § 63-1311A.

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

7. **Outside Storage.** Lessee is prohibited from storing any personal property outside the buildings on the Premises.

8. **Signage.** Lessee shall not erect, maintain, or display any signs upon the outside of any improvements or on the leased Premises without the prior written approval of Lessor or the Airport Manager.

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

10. **Premises Improvements.**

A. **Maintenance.** Lessee shall have sole responsibility for maintenance of the Premises. All personal property, including buildings and structures, on the Premises, shall be at the risk of Lessee. Lessee shall keep and maintain the Premises and all improvements thereon, in good and substantial repair and condition, including the exterior thereof, and shall make all necessary repairs and alterations thereto. Lessee shall provide proper containers for trash and garbage, and shall keep the Premises free and clear of rubbish, debris, litter and weeds and shall not permit the accumulation of any inoperable equipment, machinery or vehicles on the Premises. In the event that Lessor determines that Lessee has failed to comply with the terms of this Paragraph, Lessor may, but shall have no obligation to, take such action as is required by this Paragraph, and charge Lessee the actual cost incurred to comply with this Paragraph or a reasonable fee for the services.

Lessee shall not permit parking on the Premises unless the parking areas have been excavated to the proper sub grade and backfilled with an amount of gravel as specified by Lessor. Lessee shall keep the Premises in good maintenance and repair, and further agrees to repair at its sole cost and expense, all property, and any and all property belonging to Lessor, that is damaged by Lessee in maintaining or operating on the Premises.

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

In the event that Lessee desires to alter, replace, demolish, or add to existing improvements or construct new improvements on the Premises, alteration, replacement, demolition, addition or new improvement final plans and specifications, site-use plans and architectural renderings thereof shall be submitted to, and approved by Lessor, and the Federal Aviation Administration, if applicable, prior to the commencement of any construction. Demolition and construction of the alterations, replacements or additions to existing improvements must be substantially completed within one (1) year of the date of Lessor's approval and fully completed within eighteen (18) months of the date of Lessor's approval. The demolition of existing buildings and all alterations, replacements, additions and new facilities shall comply with the laws and ordinances relating thereto. All work with respect to any alterations, additions, or new improvements must be done in a good and workmanlike manner and diligently

prosecuted to completion. Lessee shall see to it that such construction shall not cause dust outside the Premises or be a nuisance to any other Lessees or adjacent landowners.

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

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

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

**11. Liens and Leasehold Mortgages.** Lessee shall keep the Premises ("the ground") as specifically described in Paragraph 1, free and clear of all liens, mortgages and encumbrances of any kind in any way arising out of the construction, improvement or occupation of the Premises by Lessee. Provided, however, Lessor agrees that Lessee shall have the right to mortgage and collaterally assign its interests in this Lease, including without any limitation granting security interests for Small Business Administration loans, subject to the terms of this Lease Agreement. In no event and under no circumstances shall this Paragraph or anything contained elsewhere in this Lease be deemed or construed to require, allow or constitute a subordination of Lessor's fee simple interest in the premises to any borrowing or other obligations of Lessee.

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

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

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

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

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

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

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

**17. Care of Petroleum Products and Other Material by Lessee.** Lessee shall handle, use, store and dispose of petroleum products, and all other materials (including but not limited to hazardous materials) owned or used by it on the Premises in accordance with all applicable federal, state, local and Airport Rules and Regulations. Lessee shall, at Lessee's own expense, comply with, and cause all its employees, agents, invitees, licensees, subtenants, assignees and others under its control on the Premises and related airport facilities to comply with, all local and state environmental laws, rules and regulations, the Comprehensive

Environmental Response, Compensation & Liability Act (42 U.S.C. § 9601 *et seq.*), and all other applicable federal laws, rules and regulations, and any and all amendments thereto, or hereafter promulgated.

Lessee shall not cause or suffer to occur, a release, discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous substance as defined in Paragraph 16 at, upon, under or within the Premises, or related airport facilities, including the storm sewer, or any contiguous real estate. Lessee shall not permit its employees, agents, invitees, licensees, sublessees, assignees or others under its control on the Premises and related airport facilities to engage in any activity that could lead to the imposition of liability under any environmental laws or similar applicable laws or regulations. Should "hazardous substances" and/or "hazardous wastes" be released, spilled or escape from storage or in any way contaminate the Premises, the remaining Airport property or property adjacent to the Airport through activities of the Lessee, its employees, agents, invitees, licensees, sublessees, assignees or others under its control on the Premises or related airport facilities, Lessee shall be responsible for the clean up, containment and abatement of such contamination at Lessee's sole cost and expense. Should the Lessee fail to do so, Lessor, at its option, but without obligation, may take any reasonable and appropriate action in Lessee's stead. Lessee shall pay the cost of such remedial action upon delivery to Lessee of an itemization of the costs incurred.

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

**18. Hold Harmless.** Lessee and all sublessees shall indemnify and hold the Lessor and the property of the Lessor, including the Premises, free and harmless from any and all claims, liability, loss, damage or expense, except in the event of the Lessor's sole negligence or willful misconduct, resulting from Lessee's and sublessee's occupation and use of the Premises, including any claim, liability, loss, or damage arising by reason of injury to or death of any person or persons or by reason of damage to any property caused by Lessee's or sublessee's operations on the Premises, the condition of the Premises, the condition of any of Lessee's improvements or Lessee's or sublessee's personal property in or on the Premises, or the acts or omissions of any person in or on the Premises with the express or implied consent of the Lessee including but not limited to the Lessee, its employees, agents, invitees, licensees, sublessees, assignees, concessionaires, occupants and users of the Premises. Provided however, Lessee shall have no obligation to indemnify and hold the Lessor harmless for claims, liability, loss, damage or expense directly resulting from Lessor's negligence or willful misconduct except by way of liability insurance required in Section 19. Lessor shall not be liable for any personal injury or property damage which may be sustained by Lessee or sublessees, their employees, agents, customers or other persons, that occur on the Premises, or at Joslin Field – Magic Valley Regional Airport that are the direct result of the activities of the Lessee or sublessees, their employees, agents, invitees, licensees,

sublessees, assignees, concessionaires, occupants and users of the Premises, and Lessee agrees to indemnify and hold Lessor harmless from such liability.

Lessee hereby agrees with Lessor that Lessor shall not be liable for injury to Lessee's business or for any loss of income sustained by Lessee or for damage to the property of Lessee, Lessee's employees, invitees, customers, or any other person in or about the Premises or related Airport facilities for purposes of Lessee's business. Further, the parties agree that Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor.

**19. Insurance.** At all times during the term of this Lease, Lessee shall maintain, at its expense, a policy of public liability insurance covering Lessee's occupation and use of the Premises, designating Lessor as an additional insured and protecting Lessor and Lessee against all claims for personal injury, death and property damage occurring upon, in or about the demised Premises relating to or arising out of Lessee's occupation and use of the Premises, with limits of at least \$2,000,000.00 combined single limit each occurrence for personal injury and property damage; all said insurance to protect, hold harmless, and indemnify Lessor not only against any and all such liability, but also against all loss, expenses and damage of any and every sort and kind, including costs of investigation, attorneys' fees and other costs of defense, subject to policy terms, conditions, limitations and exclusions. Without limiting the foregoing, said policy shall cover the activities of any and all of Lessee's agents, employees, contractors, subcontractors, and all sublessees or other persons or entities using the Premises with the consent of the Lessee. With respect to the coverages required in this paragraph, the parties agree that Lessee's policy or policies shall be primary to any other valid and collectible insurance available to Lessor.

The above required insurance shall be maintained with an insurance carrier, or insurance carriers, satisfactory to Lessor and shall not be subject to cancellation except after at least ten (10) days' prior written notice to Lessor. Lessee shall provide Lessor with copies of the policy or policies for said insurance, or duly executed certificate or certificates for the same, showing full compliance to date with the requirements of this section, and shall at all times keep current policies or certificates on deposit with Lessor. If Lessee fails to comply with such requirement, Lessor may obtain such insurance and keep the same in force and effect, and Lessee shall pay Lessor upon request the premium cost thereof for the term of this Lease then unexpired.

**20. Licenses, Fees and Permits.** Lessee shall purchase and maintain all licenses and permits, and pay all fees required of Lessee, under any federal, state and local law or regulation to conduct Lessee's operation on the Premises.

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

- A. The following shall constitute a default of the Lease.
  - i. Failure of Lessee to pay rent or any other charge within thirty (30) days after the same is due.
  - ii. Failure of Lessee to comply with any term, covenant or condition of the Lease, other than as specified in Paragraph i. above, within thirty (30) days after written notice by Lessor to Lessee specifying the nature of the term, condition or obligation breached.
  - iii. Abandonment of the Premises for a period of three hundred sixty-five (365) consecutive days and Lessee's failure to reoccupy the Premises within ten (10) days after written notice by Lessor to Lessee of the abandonment.

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

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

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

**22. Termination.** In addition to the right to terminate this Lease as provided in Paragraph 21, Lessor shall have a right to terminate this Lease upon thirty (30) days written notice for any of the following reasons:

A. If Lessor determines that the Premises is necessary or required for developing or maintaining the Airport or Lessor determines in accordance with the Airport Master Plan and FAA-approved Airport Layout Plan, to construct, repair, alter, develop or improve Magic Valley Regional Airport – Joslin Field, including but not limited to the buildings, parking, lighting, runways, airspace designation, which alteration, development or improvement requires Lessee to remove any structure from the leased Premises. If Lessor exercise their right under this Paragraph to cause Lessee to remove its personal property from the Premises and relocate it to another location, Lessor agrees to pay Lessee the cost of relocating the personal property. If Lessor causes Lessee to remove its personal property from the Premises, Lessor agrees to pay Lessee the fair market value of Lessee's personal property, at which time the personal property shall become the property of Lessor.

B. If any federal, state or local court or authority mandates a change in the operations the Airport facility which necessitates the removal of any structure on the leased Premises.

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

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

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

F. Lessee's failure to replace any improvements which may have been destroyed within six (6) months from the date of destruction.

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

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

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

- i. All fuel storage tanks used by Lessee or under its control in accordance with all applicable statutes or regulations shall be removed prior to the termination or expiration of this Lease;
- ii. All personal property, including trade fixtures, owned or leased by Lessee and used upon the Premises shall be removed prior to the termination or expiration of this Lease;

**B. Lessee's Improvements.** All improvements, including but not limited to, all structures and buildings shall be removed and the real property restored to a condition acceptable to Lessor within one hundred eighty (180) days of the termination or expiration of this Lease. During this period, Lessee shall continue to pay Lessor rent for the Premises on a prorated daily basis which rent shall be due and payable on the 1<sup>st</sup> day of each month for the previous month.

**C. Removal or Sale.** Prior to and within this one hundred eighty-day-period, Lessee shall have the right to sell its personal property, including but not limited to, all concession stands, grandstands, fuel tanks and related facilities and improvements, to a third party, however, the personal property must be removed from the Premises or a new Lease executed with Lessor within the one hundred eighty-day-period. If Lessee fails to remove all personal property, including improvements, and restore the Premises within (180) days of the termination or expiration of this Lease, Lessor shall have the right, but not the obligation, to purchase the personal property, including improvements, for the sum of One and No/100 (\$1.00) Dollar. Lessee agrees to execute all documents necessary to transfer title to the personal property from Lessee to Lessor and thereafter Lessee shall have no further right, title or interest in the above-described personal property and Lessor shall be entitled to possession and ownership of the personal property, including improvements. In the alternative, Lessor may remove the same and restore the Premises, at Lessee's sole cost and expense, which amount shall be immediately due and payable to Lessor upon completion of the removal.

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

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

- A. default by Lessor in the performance of any covenant or agreement herein required to be performed by Lessor and Lessor's failure to cure said default within sixty (60) days after Lessee having first given Lessor written notice of the default;
- B. a final court order prohibiting Lessee from conducting all of the permitted uses of the Premises described in this Lease.

25. **Condemnation.** In case of a taking by eminent domain ("Taking") by the United States of America, other than for temporary use, of either (a) the entire Premises, or (b) such a substantial part of the Premises as shall have the result that the portion of the Premises remaining after such Taking (even if restoration were made) will be economically unsuitable for the uses to which the Premises was put prior to the Taking, this Lease shall terminate as of the date of the transfer of possession to the United States of America. In the event of a Taking of a portion of the Premises that is not a Total Taking, then and in that event this Lease may remain in full force and effect as to the portion of the Premises remaining immediately after such Taking at a rental rate agreed to by the parties. In no event shall Lessor be liable to Lessee for any damages sustained by Lessee as a result of a taking by eminent domain by the United States of America.

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

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

Lessor:	Joslin Field, Magic Valley Regional Airport c/o City of Twin Falls P.O. Box 1907 Twin Falls, Idaho 83303-1907
Lessee:	McKean Racing, LLC 152 East Main Jerome, Idaho 83338

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

27. **Nondiscrimination.**

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

B. Lessee, for itself, its successor in interest, and assign, hereby covenants and agrees, as a covenant running with the land, that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of the leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) Lessee shall use the Premises in compliance with all other requirements imposed by, or pursuant to, Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended,

to the extent that said requirements are applicable as a matter of law to Lessee; and, that in the event of breach of any of the preceding nondiscrimination covenants, Lessor shall have the right to terminate this Lease, and to re-enter and repossess said Premises, and hold the same as if said Lease had never been made or issued; provided, however, said termination shall be withheld until the alleged breach has been finally adjudicated and/or all procedures have been exhausted. In the event of noncompliance with the preceding nondiscrimination covenants, Lessee hereby authorizes Lessor to take such action as the Federal Government may direct to enforce this covenant, and Lessee also authorizes the Federal Government to take appropriate action to enforce compliance, including the right to seek judicial enforcement.

Further, with respect to the leased Premises, Lessee agrees to undertake any affirmative action program to the extent that one is required as a matter of law to Lessee, by 14 CFR Part 152.

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

**29. No Partnership.** Nothing contained in this Lease shall create or be construed as creating a partnership, joint venture, or employment relationship between Lessor and Lessee. Neither Lessor nor Lessee shall be liable, except as otherwise expressly provided in this Lease, for any obligations or liabilities incurred by the other. Lessee expressly agrees to indemnify and hold Lessor, and the property of the Lessor, including the Premises, free and harmless from any and all obligations and liabilities incurred by Lessee in conducting its activities on the Premises.

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

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

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

**33. Assignments and Subleases.** Lessee may sublease the Premises or assign this Lease for the uses described in Paragraph 3 after first obtaining Lessor's written consent. Said consent will not be unreasonably withheld.

A. No assignment or sublease releases the Lessee of his obligations or alters the primary liability of the Lessee to pay the rent and to perform all the Lessee's other obligations under this Lease.

- B. Any sublease permitted must comply with the following terms and conditions:
  - (i) Lessee may sublease the Premises, or a part thereof, to other persons or organizations for the uses set forth in Paragraph 3, for periods not to exceed fifteen (15) days per event;
  - (ii) all subleases must comply with the terms of this Lease;
  - (iii) the sublessees must obtain insurance that meets the requirements of Paragraphs 18 and 19 and provide proof in advance to the Airport Manager;
  - (iv) no construction of additional facilities is allowed by a sublessee; and
  - (vii) subleasing by a sublessee is prohibited.

C. In computing the amount of rent due hereunder during the period the Premises is subletted, the Lessee shall account for and include under the provisions of Paragraph 6, the number of all paying attendees at all activities held on the leased Premises by any sublessee or any other person or entity using the Premises with the consent or permission of the Lessee.

**34. Binding Effect.** The provisions and stipulations hereof shall inure to the benefit of and bind the assigns and successors in interest of the respective parties hereto.

**35. Arbitration.** Any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered and enforced in any court having jurisdiction thereof. The arbitration shall be held at such place in the City of Twin Falls, Idaho as may be selected by mutual agreement. Within twenty-one (21) days after either party gives notice of demand for arbitration, the parties shall agree on the appointment of an arbitrator. If a single arbitrator is agreed upon, all fees and expenses of the arbitration shall be borne by the parties equally. If the parties are unable to agree on a single arbitrator within this time period, the parties shall each appoint an arbitrator within fifteen (15) days from the expiration of the twenty-one (21)-day-period. If the arbitrators appointed by the parties are then unable to resolve the dispute within fifteen (15) days from the date of appointment of the last of the two arbitrators, then the two arbitrators shall appoint a third arbitrator. The majority decision of the three arbitrators shall be final and binding on the parties hereto. Each party shall bear the cost of the arbitrator appointed by him and the cost of the third arbitrator shall be equally divided between the parties. Further, each party to the arbitration proceeding shall bear the expenses of its own counsel, experts, witnesses and preparation and presentation of proofs.

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

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

IN WITNESS WHEREOF, the Lessor and Lessee execute this Lease Agreement the day and year first above written.

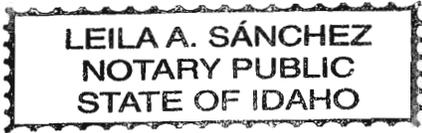
**LESSOR:**  
**CITY OF TWIN FALLS, IDAHO,**  
a municipal corporation,

ATTEST:

Leila A. Sanchez  
DEPUTY CITY CLERK

By [Signature]  
Mayor

**LESSEE:**  
**MCKEAN RACING, LLC**



By [Signature]  
Eddy McKean

**GUARANTY**

The Undersigned, being all of the Members of McKean Racing, LLC, the Lessee herein, do hereby, jointly and severally, personally guarantee unto the Lessor the timely payment and performance of all of the Lessee's obligations and covenants set forth in the foregoing Lease Agreement, and any and all amendments and addendums thereto which may hereafter be agreed upon by the Lessee and the Lessor.

Dated this 11<sup>th</sup> day of July, 2007.

[Signature]  
Eddy McKean

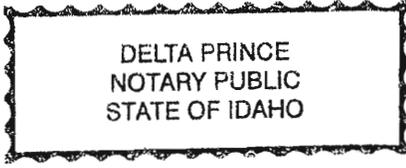
[Signature]  
Lynette McKean

State of Idaho }  
County of Booding } ss.

On this 11<sup>th</sup> day of July, in the year 2007, before me, \_\_\_\_\_ the undersigned \_\_\_\_\_, personally appeared Eddy McKean and Lynette McKean, known or identified to me to be (the manager, the managers, a member, the members) of the limited liability company that executed the foregoing instrument, and acknowledged to me that such limited liability company executed the same.

WITNESS my hand and official seal.

Delta Prince  
Notary Public  
Residing At: Booding, ID  
Commission Expires: 9-13-2010



## ADDENDUM TO LEASE AGREEMENT

THIS ADDENDUM TO LEASE AGREEMENT (“Addendum”), made by and between the City of Twin Falls (“City”), and McKean Racing, LLC (“McKean”).

### RECITALS

WHEREAS, The parties hereto previously entered into a LEASE AGREEMENT (“Agreement”) with an effective date of March 1, 2007; and,

WHEREAS, The Agreement provides for additional rent based upon the number of tickets sold; and,

WHEREAS, In addition to selling tickets, McKean also gives away tickets; and,

WHEREAS, The parties have agreed that the Lessors should also receive rent based upon the number persons admitted on free tickets.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto and the recitals set forth above which are acknowledged by the parties as true and correct and incorporated herein, the parties agree that the LEASE AGREEMENT with an effective date of March 1, 2007, is amended as follows:

1. Paragraph 6.B. of the Agreement is amended to read as follows:

**“B. Additional Rent.** At the end of the first twelve (12) months of the leased term, and at the end of each succeeding twelve-month-period, Lessee shall prepare and present to the Lessor an accounting of the number of persons paying admittance fees for all activities held on the leased Premises during the immediately preceding twelve-month-period, and an accounting of the number of persons admitted on free tickets. The number of persons admitted on purchased tickets shall then be multiplied by \$.450 (2012-\$.51), and the number of persons admitted on free tickets shall be multiplied by \$.225 (2012-\$.255) and if the sum exceeds \$4000.00, the excess shall be deemed additional rent for said twelve-month-period, which amount shall be due and payable to Lessor within thirty (30) days from the end of the twelve-month-period to which it relates. The Additional Rent multiplier may from time to time be adjusted pursuant to Paragraph C.”

2. All other terms of the Lease Agreement shall remain in full force and effect, except as otherwise provided herein.

[End of Text]

IN WITNESS WHEREOF, the Lessor and Lessee execute this Lease Agreement the day and year first above written.

**LESSOR:**

**CITY OF TWIN FALLS, IDAHO,**

a municipal corporation,

By \_\_\_\_\_

Mayor

**LESSEE:**

**MCKEAN RACING, LLC**

By \_\_\_\_\_

Eddy McKean



**Date:** Monday, December 17, 2012, Council Meeting

**To:** Honorable Mayor and City Council

**From:** Captain Anthony Barnhart, Twin Falls Police Department

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**Request:**

Consideration of a request to amend the Twin Falls City Fireworks Ordinance.

**Time Estimate:**

Approximately ten minutes will be needed for the presentation and to answer any questions the Council may have.

**Background:**

At the City Council meeting held on July 9, 2012, Councilman Chris Talkington brought for discussion the Fourth of July, specifically, noise disturbances associated with illegal fireworks and the City's Fireworks Ordinance.

The proposed amendment to Section 6-9-2, Definitions, provides a more thorough definition of "Fireworks," along with specific information regarding "Dangerous Fireworks" and "Safe and Sane Fireworks."

The proposed amendment to Section 6-9-3 provides for requirements which must be met in order to obtain a permit to sell fireworks and for proper storage of said fireworks. Sections 6-9-4 and 6-9-5 have been updated to reflect that permit applications and payment of application fees are to be made through the Twin Falls Fire Department. Section 6-9-5(G) requires an applicant who is storing safe and sane or dangerous fireworks to apply for and obtain a special use permit. Section 6-9-6 provides the Twin Falls Fire Department the ability to investigate the applicant and his/her application to sell or use fireworks, the power to grant or deny permits, and time requirements for the filing of fireworks permits, along with the process to appeal a decision made by the Twin Falls Fire Department.

The proposed amendment to Section 6-9-8 specifically provides the authorized dates of sale and hours of use/discharge of Safe and Sane Fireworks. In order to promote the safe storage of fireworks, we propose that Section 6-9-9 (L) be amended to require fireworks stands to properly store and secure the fireworks in order to comply with State Fireworks Act, Idaho Code Section 39-2608.

Confiscation of illegal fireworks by law enforcement is provided to the Chief of Police or his agents or employees, City Code Section 6-9-14.

Finally, the proposed amendment to City Code Section 6-9-15 provides for penalties to be imposed when dangerous fireworks are in the possession of an individual or discharged by an individual without a dangerous fireworks permit, as well as the use or discharge of Safe and Sane Fireworks outside of the designated dates of sale and designated usage hours.

Agenda Item for December 17, 2012  
From Captain Anthony Barnhart  
Page Two

**Approval Process:**

Approval by the City Council.

**Budget Impact:**

If the proposed amendment is approved, the Twin Falls Police Department will move forward with a stronger stance on illegal fireworks, thus causing the need for overtime funds in order to step up enforcement. This will affect the Patrol Division's overtime line item.

**Regulatory Impact:**

None

**Conclusion:**

If approved, the proposed amendments to the Twin Falls City Fireworks Ordinance will provide a safer environment for our community during the Fourth of July (between June 23rd and July 5th) and during the holiday season (between December 26th and January 1st). The specific requirements for the sale, storage, and usage of Safe and Sane Fireworks will enhance the enforcement ability of the Twin Falls Police Department. Both the Twin Falls Police Department and the Twin Falls Fire Department recommend that the City Council approve the proposed amendments.

**Attachments:**

Proposed Amendment to the City Fireworks Ordinance

AB:aed

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AMENDING DEFINITIONS, AMENDING THE REQUIREMENTS FOR PERMITS, REQUIRING APPLICATIONS TO THE TWIN FALLS FIRE DEPARTMENT, MODIFYING AUTHORIZED DATES OF SALE AND HOURS OF USE, REGULATING SHORT-TERM STORAGE OF FIREWORKS, REQUIRING COMPLIANCE WITH THE STATE FIREWORKS ACT, PROVIDING OF CONFISCATION OF ILLEGAL FIREWORKS BY THE POLICE DEPARTMENT, AND PROVIDING FOR PENALTIES FOR POSSESSION AND USE OF FIREWORKS.

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

Section 1: That Twin Falls City Code §6-9-2 providing for Definitions is repealed, and replaced with the following New §6-9-2 as follows:

“6-9-2: DEFINITIONS:

FIREWORKS:

Any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation. Fireworks include items classified as common or special fireworks by the United States bureau of explosives or contained in the regulations of the United States department of transportation and designated as UN 0335 1.3G or UN 0336 1.4G.

The term "fireworks" shall not include any automotive safety flares, toy guns, toy cannons, caps or other items designed for use with toy guns or toy cannons, party poppers, or other devices which contain twenty-five hundredths (.25) of a grain or less of explosive substance.

Fireworks shall not include model rockets and model rocket engines and their components which are designed, sold and used for the purpose of propelling recoverable aero models.

Fireworks shall not include flares, noisemakers or signals designed and used for the purpose of protecting the public.

DANGEROUS FIREWORKS: Includes any of the following:

(A) Skyrockets and bottle rockets, including all similar devices employing any combustible or explosive material which rise in the air during discharge;

- (B) Roman candles and similar devices, including cakes, repeaters and multiple tube devices loaded in such a way as to propel pyrotechnic effects into the air;
- (C) Aerial display shells containing pyrotechnic effects or salutes producing displays or reports in the sky generally fired or propelled from a cylindrical or spherical shell casing;
- (D) Snakes or other effects which are ignited or burn containing bichloride of mercury;
- (E) Sparklers more than ten inches (10") in length or one-quarter inch ( $\frac{1}{4}$ ") in diameter;
- (G) Sky Lanterns, Fire balloons or balloons of any type which have burning material of any kind attached thereto or which require fire underneath to propel them.

SAFE AND SANE FIREWORKS: Includes any of the following "nonaerial" common fireworks:

- (A) Any fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products;
- (B) Cylindrical fountains with inside tube diameter not exceeding three-fourths inch ( $\frac{3}{4}$ ");
- (C) Sparklers and "dipped sticks" not more than ten inches (10") in length or one-fourth inch ( $\frac{1}{4}$ ") in diameter with pyrotechnic composition not exceeding four grams (4g) each. Sparklers or "dipped sticks" described in this section shall be burned individually and shall not be conjoined, banded, attached or affixed to additional sparklers or "dipped sticks" while ignited;
- (D) Snakes which do not contain bichloride of mercury;
- (E) Whistles, without report and which do not dart or travel about the ground during discharge containing no picric or gallic acid."

Section 2: That Twin Falls City Code §6-9-3 is amended as follows:

"6-9-3: PERMITS:

- (A) Dangerous Fireworks Permit: It shall be unlawful for any person in the city to import, export, offer for sale, sell, possess, keep or store or permit the keeping or storing of any dangerous fireworks for any use or purpose, except that a person holding a dangerous fireworks permit issued pursuant to the terms and conditions of this chapter may use dangerous fireworks for a safely supervised and conducted public

display of fireworks. Said fireworks may be stored for a period not exceeding ten (10) days immediately preceding the date of said public display, provided the fireworks are to be used exclusively for the public display.

- (B) Safe And Sane Fireworks Permit: No person, without having a valid safe and sane fireworks permit issued pursuant to the terms and conditions set forth in this chapter, shall import, export, ~~offer for sale, sell, possess, keep or store, or permit the keeping or storing of any safe and sane fireworks for any use or purpose~~ sell, or offer for sale any fireworks. ~~Safe and sane fireworks may be stored for the entire calendar year if a current, valid permit for that calendar year has been obtained by applicant and all other conditions of this chapter have been met~~ A short-term storage facility as defined by Idaho Code 39-2608 (2) may be used for the storage of safe and sane fireworks for a period of sixty (60) days prior to, and fifteen (15) days after, any authorized dates of sale provided within this chapter.”

Section 3: That Twin Falls City Code §6-9-4 is amended as follows:

“6-9-4: APPLICATION FOR PERMITS:

- (A) Safe and Sane Fireworks Application: Any reputable person in reasonable pursuit or furtherance of any legitimate personal, business or charitable purpose, desiring to engage in the sale of safe and sane fireworks within the city shall first make written application to the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, for a safe and sane fireworks permit. Each applicant shall pay to the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, a fee of ~~one hundred twenty five dollars (\$100.00)~~ (\$25.00) at the time the application is filed. The applicant shall pay to the Twin Falls Fire Department a fee of twenty five dollars (\$25.00) for inspection of temporary fireworks stands.
- (B) Dangerous Fireworks Application: Any reputable person in reasonable pursuit or furtherance of any legitimate personal business or charitable purpose desiring to make a public display of dangerous fireworks shall first make written application to the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, for a dangerous fireworks permit. Each applicant shall pay to the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, a fee of ~~one hundred twenty five dollars (\$100.00)~~ (\$125.00) at the time the application is filed. No permit fee shall be refunded. The applicant shall also reimburse the city for all reasonable expenses incurred in investigating to determine whether the permit should be granted.”

Section 4: That Twin Falls City Code §6-9-5 is amended as follows:

“6-9-5: REQUIREMENTS FOR APPLICATION FOR PERMITS:

Each applicant for a safe and sane fireworks permit or a dangerous fireworks permit shall file his application with the ~~public safety department, fire inspection division~~ Twin Falls Fire Department. Each application shall show the following:

- (A) Name and address of applicant.
- (B) The purpose for which the applicant is primarily existing and for which it was organized.
- (C) The names and addresses of the officers, trustees and/or directors, if any, of the applicant.
- (D) The location where the applicant requests permission to sell safe and sane fireworks or display dangerous fireworks.
- (E) When and where the applicant was organized and established, or, if a natural person, the applicant's age.
- (F) The location of the applicant's principal and permanent meeting place or places.
- (G) If applicant is storing safe and sane or dangerous fireworks, applicant must apply to the planning and zoning administrator, and the planning and zoning administrator must forward written approval and the special use permit (if required) to the fire department, and building department, indicating that the permit request is in compliance with all zoning requirements for an H-1 occupancy pursuant to title 10 of this code. The written approval and special use permit (if required) must be submitted to the fire department, and building department prior to approval of the fireworks permit. ~~The fire department shall issue to the applicant the fireworks and special use permit (if required) simultaneously.~~
- (H) Two (2) complete plot plans, indicating where the building is located in relationship to property lines and any other buildings, and two (2) complete floor plans of the building, indicating all proposed uses, must be submitted to the ~~public safety department, fire inspection division~~ Twin Falls Fire Department. The drawings shall be to scale.
- (I) The maximum amount of safe and sane fireworks to be stored shall be indicated on the application. Such amount shall be specified in pounds.
- (J) The applicant's state sales tax permit number.
- (K) If the applicant is an entity other than sole proprietorship, the name and general description of the business activities of each parent or subsidiary company, business or entity, and a general description of the ownership organization of each parent or subsidiary, if any.

(L) Such other information as the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, may require on a standard form submitted to all applicants and which is reasonably necessary to protect the public health, safety and welfare.”

Section 5: That Twin Falls City Code §6-9-6 is amended as follows:

“6-9-6: PERMIT CONDITIONS:

(A) Investigation and Recommendation For Permits: ~~The public safety department, fire inspection division~~ Twin Falls Fire Department, shall ~~may~~ cause an investigation to be made of each application and applicant.

(B) Grant Or Denial Of Permits: ~~The public safety department, fire inspection division~~ Twin Falls Fire Department, shall have the power in its discretion to grant or deny any application, subject to such reasonable conditions, if any, as it shall prescribe so long as the denial of the application or any conditions imposed on the granting of the application are reasonably necessary for protection of the public health, safety and welfare.

(C) Terms of Permits: A safe and sane fireworks permit or a dangerous fireworks permit, issued pursuant to this chapter, shall be valid only within the calendar year in which issued. A permit shall be valid only for the specific premises or location designated in the permit. However, subject to reasonable conditions necessary for protection of the public health, safety and welfare, an applicant may be granted permits for more than one premises or location within the city. No permit shall be transferable or assignable.

(D) Time of Application For Safe And Sane Fireworks Permit: Each application for a permit to sell safe and sane fireworks at retail shall be filed with the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, ~~on or before June 1 of the calendar year for which the permit is sought~~ a minimum of thirty (30) days prior to a date on which the retail sale of safe and sane fireworks is authorized under this chapter.

(E) Appeal of The ~~Public Safety Department, Fire Inspection Division~~ Twin Falls Fire Department, Decision: If the applicant is aggrieved by the decision of the ~~public safety department, fire inspection division~~ Twin Falls Fire Department, the applicant may appeal such decision to the ~~board of appeals of the public safety department, fire inspection division~~ Twin Falls Fire Department Administration, within seven (7) days of notice of the decision of the ~~public safety department, fire inspection division~~ Twin Falls Fire Department. The applicant must, in writing, appeal to the ~~board of appeals of the public safety department, fire inspection division~~ Twin Falls Fire Department Administration, and set forth the reasons therefore why the applicant should not be denied a license. The ~~board of appeals of the public safety department, fire inspection division~~ Twin Falls Fire Department Administration, shall set the time and place for a hearing a reasonable period of time subsequent to applicant's written

notice of appeal. Notice of such hearing shall be personally served upon the applicant, or mailed postage prepaid to the applicant at his/her last known address, at least three (3) days prior to the date of the hearing. The order of the ~~board of appeals of the public safety department, fire inspection division~~ Twin Falls Fire Department Administration, shall be final.

(F) Miscellaneous Permit Conditions For The Storage Of Safe And Sane And Dangerous Fireworks:

1. Minimum occupancy separation shall be required pursuant to the international building code.
2. Exits shall comply with the international building code.
3. Portable fire extinguishers shall be installed in the building as required by the international fire code.
4. Automatic fire extinguisher systems shall be in accordance with the international building code.
5. License or permit holders shall maintain records of all transactions involving safe and sane fireworks regarding the sale and acquisition of such fireworks.
6. Conspicuous signs shall be placed and posted at intervals not less than fifty feet (50') inside and outside of the building with the language:  
*Warning - No Smoking*
7. All provisions as currently adopted by the city pursuant to the international building code and international fire code shall be required.”

Section 6: That Twin Falls City Code §6-9-8 is amended as follows:

“6-9-8: ~~DATES FOR SALE~~ AUTHORIZED DATES OF SALE AND HOURS OF USE:

~~Nonaerial common fireworks~~ Safe and Sane, “nonaerial common fireworks” may be sold at retail beginning at twelve o'clock (12:00) midnight June 23, and ending at twelve o'clock (12:00) midnight July 5 and beginning at twelve o'clock (12:00) midnight December 26 and ending at twelve o'clock (12:00) midnight January 1. The authority having jurisdiction may at its discretion extend each period of sales by not more than five (5) days. Safe and Sane, “nonaerial common fireworks” shall only be used or discharged within the City of Twin Falls between the hours of eight o'clock (08:00) A.M. and twelve o'clock (12:00) midnight June 23 through July 5 and December 26 through January 1.

Exception: In addition to the hours of use specified in this chapter, Safe and Sane, “nonaerial common fireworks” may be used or discharged within the City of Twin Falls between the hours of twelve o'clock (12:00) midnight and one o'clock (01:00) A.M. on January 1.”

Section 7: That Twin Falls City Code §6-9-9 is amended as follows:

“6-9-9: REGULATIONS FOR FIREWORKS STANDS:

Temporary fireworks stands from which safe and sane fireworks are to be sold shall be subject to the following provisions:

- (A) All retail sales of safe and sane fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited.
- (B) The stand in which the fireworks will be stored or sold shall not be located within twenty five feet (25') of any other building or within one hundred feet (100') of any gasoline station or flammable liquid dispensing device or installation.
- (C) All such stands shall meet the requirements of the building code of the city and all lighting circuits and other electrical equipment shall meet the requirements of the electrical code of the city.
- (D) The stand shall have exit doors at least thirty inches (30") wide at both ends of the structures and one additional door for each twenty five feet (25') of rear wall in excess of twenty five feet (25'). All doors shall open outward from the stand and all doorways shall be kept free and clear from all supplies and materials at all times.
- (E) Each stand shall be provided with a minimum of two (2) ~~2<sup>1</sup>/<sub>2</sub>-gallon water type~~ fire extinguishers with a 2A minimum rating, in good working order and easily accessible for use in case of fire, which shall be kept in immediate proximity to the location where the fireworks are retailed.
- (F) There shall be at least one supervisor, twenty one (21) years of age or older, on duty at all times. All fireworks shall be effectively kept away from any kind of self-service by the public, and shall be placed in a location which is unavailable and inaccessible to members of the public in capacities other than as legal customers.
- (G) No person employed as a watchman shall be permitted to remain inside of any stand when it is not open for business.
- (H) "NO SMOKING" signs shall be prominently displayed both inside and outside the stand. No smoking shall be permitted within the stand or within twenty five feet (25') of the stand.
- (I) No temporary stand shall be erected before June 10 of any year. The premises on which the stand is erected shall be cleared of all structures and debris not later than twelve o'clock (12:00) noon on July 27.
- (J) No fireworks shall be discharged in or within twenty five feet (25') of any fireworks stand.
- (K) No person shall allow any rubbish to accumulate in or around any fireworks stand or permit a fire nuisance to exist.

(L) ~~No fireworks shall remain unattended at any time regardless of whether the fireworks stand is open for business or not. If any fireworks are stored, they shall only be stored at such places as are approved for storage of fireworks by the director of public safety of the city, or his representative. Fireworks shall not be left in the stand when it is not open for business unless the stand is locked or secured. If fireworks are not stored in the stand they shall be stored in compliance with section 39-2608, Idaho Code.~~

(M) No stand shall have a floor area in excess of seven hundred fifty (750) square feet.”

Section 8: That Twin Falls City Code §6-9-11 is repealed and replaced by a New §6-9-11 as follows:

“6-9-11: SHORT-TERM STORAGE.

A short-term storage facility may be used for the storage of Safe and Sane, “non\_aerial common fireworks” for a period of sixty (60) days prior to, and fifteen (15) days after, any authorized retail sales date. The Twin Falls Fire Department shall be notified of the address or location of all short-term storage facilities when fireworks will not be stored in a temporary fireworks stand. If the short-term storage facility is not within the boundaries of the jurisdiction having issued the retail sales permit the permittee shall notify the authority having jurisdiction where the storage is to take place.

Short-term storage is allowed in any of the following, provided it is locked or otherwise secured: a temporary fireworks stand, truck, trailer, or other vehicle. A truck, trailer or other vehicle used for short-term storage must remain at least twenty-five (25) feet from the stand during any time the stand is open for business, but may abut the stand when it is closed. A truck, trailer or vehicle used for short-term storage must be at least twenty-five (25) feet from any other inhabited building. Short-term storage may occur in a locked or secured shed, garage, barn or other building or storage container which is detached from an inhabited building and contains no open flames, including heating and lighting sources. ~~The Twin Falls Fire Department may, in its discretion, allow short term storage to occur in an attached garage with a one (1) hour fire wall separating the garage from any inhabited area.”~~

Section 9: That Twin Falls City Code §6-9-10 is amended as follows:

“6-9-12: DUTY TO COMPLY:

It shall be the duty of every person issued a fireworks permit to comply with all the provisions of the ~~Idaho state fireworks act~~ Idaho State Fireworks Act of 1997 and this chapter. The conviction of violation of the aforesaid Idaho state fireworks act or any of the provisions of this chapter by the permittee, or by any of its agents, employees or officers shall constitute a cause, in and of itself, to deny any subsequent application for a permit.

Section 10: That Twin Falls City Code §6-9-13 is amended as follows:

“6-9-13: REVOCATION OF PERMITS:

Any permit issued hereunder shall be subject to revocation by the ~~city council~~ City Council for violation by the holder, his agents or employees, of any of the provisions contained herein or of any law of the state of Idaho or United States pertaining to fireworks, provided that at least one day notice of hearing upon said revocation shall be given to said holder by personal service or by leaving a copy of notice at the place of business of the holder.”

Section 11: That Twin Falls City Code §6-9-14 is amended as follows:

“6-9-14: CONFISCATION OF ILLEGAL FIREWORKS:

The ~~director of public safety~~ Chief of Police, or his agents, or employees, may confiscate any fireworks that are imported, exported, sold, offered for sale, given away, possessed, stored, displayed, or discharged in a manner violating any provision of this chapter.”

Section 12: That Twin Falls City Code §6-9-15 is amended as follows:

“6-9-15: PENALTY:

The possession or discharge of dangerous fireworks without a dangerous fireworks permit shall be an infraction punishable by a fine of one hundred dollars (\$100.00).

The use or discharge of safe and sane fireworks outside the designated dates of sale and hours of use specified within this chapter shall be an infraction punishable by a fine of one hundred dollars (\$100.00).

All other violations of this chapter shall be a misdemeanor punishable by a fine of up to three hundred dollars (\$300.00) and imprisonment for a period of time not to exceed six (6) months, or both.”

Section 13: That this ordinance shall be effective upon passage and publication.

PASSED BY THE CITY COUNCIL, \_\_\_\_\_, 2012.  
SIGNED BY THE MAYOR \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
DEPUTY CITY CLERK



Date: Monday, December 17, 2012  
 To: Honorable Mayor and City Council  
 From: Mitch Humble, Community Development Director

**Request:**

Consideration of the annual impact fee report from the Development Impact Fee Advisory Committee.

**Time Estimate:**

The staff presentation will take approximately 10 minutes. We expect additional time will be needed to discuss and answer questions.

**Background:**

On August 1, 2009, the City began collecting development impact fees with new building permits. Part of the State requirements for cities that have an impact fee program is an annual reporting requirement from the Development Impact Fee Advisory Committee to the City Council. This agenda item is the required annual report for the close of Fiscal Year 2012. The Committee met on October 25, 2012 to make their final recommendations for this report.

Financial Data

The table below contains a summary of the impact fees collected since the program began on 8/1/09. There have been no expenditures so far, though funds are budgeted in FY2013 for a Traffic signal. The information is organized by fiscal year.

**City of Twin Falls  
 Summary of Impact Fee Activity**

9/30/2012

	<u>08-09</u>	<u>09-10</u>	<u>10-11</u>	<u>(Preliminary) 11-12</u>	<u>Total</u>
<b>REVENUES:</b>					
Residential Impact Fees-Police	\$ 2,820	\$ 20,924	\$ 16,726	\$ 25,748	\$ 66,218
Non-resid. Impact Fees-Police	\$ -	\$ 1,644	\$ 5,412	\$ 57,916	\$ 64,971
Subtotal-Police	<u>\$ 2,820</u>	<u>\$ 22,567</u>	<u>\$ 22,138</u>	<u>\$ 83,665</u>	<u>\$ 131,190</u>
Residential Impact Fees-Fire	\$ 8,055	\$ 60,063	\$ 47,776	\$ 73,520	\$ 189,414
Non-resid. Impact Fees-Fire	\$ -	\$ 4,602	\$ 15,150	\$ 155,071	\$ 174,823
Subtotal-Fire	<u>\$ 8,055</u>	<u>\$ 64,664</u>	<u>\$ 62,927</u>	<u>\$ 228,591</u>	<u>\$ 364,237</u>
Residential Impact Fees-Streets	\$ 4,065	\$ 30,545	\$ 23,734	\$ 42,530	\$ 100,874
Non-resid. Impact Fees-Streets	\$ -	\$ 21,773	\$ 46,497	\$ 173,666	\$ 241,937
Subtotal-Streets	<u>\$ 4,065</u>	<u>\$ 52,319</u>	<u>\$ 70,231</u>	<u>\$ 216,196</u>	<u>\$ 342,811</u>
Residential Impact Fees-Parks	\$ 9,150	\$ 67,402	\$ 54,270	\$ 82,022	\$ 212,845
Subtotal-Parks	<u>\$ 9,150</u>	<u>\$ 67,402</u>	<u>\$ 54,270</u>	<u>\$ 82,022</u>	<u>\$ 212,845</u>
Interest Income	\$ -	\$ 2,137	\$ 1,846	\$ 12,506	\$ 16,489
	<u>\$ 24,090</u>	<u>\$ 209,089</u>	<u>\$ 211,412</u>	<u>\$ 622,980</u>	<u>\$ 1,067,572</u>
<b>EXPENDITURES:</b>					
	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>
<b>DIFFERENCE:</b>					
	<u>\$ 24,090</u>	<u>\$ 209,089</u>	<u>\$ 211,412</u>	<u>\$ 622,980</u>	<u>\$ 1,067,572</u>

In FY 2009, the City collected \$24,090 in total impact fees. In FY 2010, the City collected \$209,089 in total impact fees. The City collected \$211,412 in impact fees for FY 2011. In FY 2012, \$622,980 was collected. The final column shows the total impact fees collected over the life of the program. That amount is \$1,067,572. Nearly half of the impact fees collected in FY 2012 were paid as part of the Chobani construction project. Even without the Chobani impact fees, FY 2012 was a record year for impact fee collection. Additional impact fees for Chobani will be paid in FY 2013 as well.

### Impact Fee Equity

In addition to the financial information above, the Committee would also like to provide some information and recommendations regarding the operation of the impact fee program and the capital improvement plans. First and foremost, the Committee did not report any perceived inequities in implementing the plan or imposing the development impact fees. This recommendation is important since the Committee is required by statute to review and report on the equity of the plan and associated fees.

### Capital Improvement Plans

Secondly, the City collects four different types of impact fees: Police, Fire, Parks, and Streets. The Committee reviewed the CIPs for each of the four types. The Committee felt no changes were needed to the CIPs for any of the four fee types. In the past, the Committee had expressed concern about the Police and Fire CIPs. The concerns were directly related to the dramatic slow-down of development and building activity. The impact fee program is established to help the City mitigate future impacts of growth on the City's infrastructure. It is a forward looking program and relies on growth projections to both create the lists of necessary improvements and to calculate the fees per unit of development. Because of the fees' link to growth projections, actual growth rates that differ dramatically from projections can cause problems.

In the case of our Police and Fire CIPs, both contain only a few large projects. For example, the Fire CIP includes two new fire stations, an aerial platform, and an engine. The smallest cost of the four is the engine at \$518,656. We have a requirement to spend impact fee money within eight years of our collecting the money. The Committee had been concerned that the slower collection rate in the last couple of years could have lead to funds that would be insufficient to spend on any of the police and/or fire projects. This year's increase in collections appears to have satisfied the concerns of the Committee, at least for the time. They would still like to cautiously monitor Police and Fire impact fee collections as the program proceeds.

### Automatic Fee Increase

The final recommendation from the Committee is regarding the automatic fee increase. As you are aware, the impact fee adopting ordinance contains a provision for the fee amounts to be automatically adjusted on January 1<sup>st</sup> of each year by an amount equal to the year's municipal cost index. On January 1, 2010, the fee amounts all increased by 1.1%. In the FY2010 and FY2011 Impact Fee Reports, the Committee recommended that the Council adopt resolutions forgoing the 2011 and 2012 automatic increases. The Council adopted those resolutions as recommended by the Committee.

This year, the Committee is recommending that the Council allow the automatic increase to occur, so long as the MCI for 2012 does not exceed 2%. The most current MCI figure is from November. The increase from November 2011 to November 2012 is 1.7%. We will not know what the January 2011 to January 2012 change will be until January 2013, but with less than a month to go, we do not expect it to exceed 2%. The Committee was still concerned about the slower building activity, but was more concerned about the impact fee program falling behind on collections. Since the Committee is recommending allowing the automatic fee increase to occur, staff has not prepared a resolution to forgo the increase. Should the Council wish to forgo the automatic increase, staff will prepare a resolution and schedule it for consideration at the next Council meeting.

### Growth Projections

The Committee discussed growth projections as part of this report as well. As you know, the growth rate is a key factor in the impact fee program. Impact fees can only be used to provide infrastructure needed to accommodate growth. The CIPs include projects needed because of growth. The cost of improvements is spread out among future development. So, if a growth projection changes, it could mean dramatic changes to the impact fee program. As growth slows, improvements will not be needed as soon and there will be fewer units to bear the cost of the improvements.

There has been a concern about the growth rate used in our impact fee program, particularly that the rate used is too high. The growth rate in the impact fee program was taken from the City's comprehensive plan. That plan was completed at about the same time that the Impact Fee Report was completed, January 2009. The growth rate assumes about 550 new single family homes per year. In the three full years since the program was approved, we have experienced new single family construction starts of 159, 96, and 151 respectively – nowhere near the 550 per year anticipated in the program. This concern caused us to budget for an amendment to our Comprehensive Plan to review and potentially adjust our long term growth projections.

We have done some preliminary investigation into this issue. The City has hired Kushlan & Associates, a planning firm out of Boise, to assist the City with the creation of a Strategic Plan update. As part of the strategic plan work, Kushlan has provided us with some demographic and growth data that was prepared by Arthur C. Nelson, a professor at the University of Utah and the President and Director of the Metropolitan Research Center, also at the University of Utah. Arthur Nelson's work suggests that Idaho will see significant growth between now and 2030, particularly the Snake River Plane area of Idaho, with Twin Falls at the epicenter of that growth. His projections include a 2030 Twin Falls population of 67,000 people. The Comprehensive Plan estimates that the Twin Falls City population will be 66,471 in 2030. The two projections are nearly identical. This preliminary information suggests that if we were to go through a process to update our long term growth projections in the Comprehensive Plan, we'd end up with something very similar to what we already have. The preliminary information provides more confidence in what we've already established and suggests that we do not need to go through a revision or update.

The Committee did have some questions. They wondered how the growth projections from the prior Comp Plan (1994) compared to actual growth since that time, and they wondered how our growth projections compared to those that the School District is using. We looked at the 1994 Comp Plan growth projections and compared them to our actual current population. As it turns out, the actual population in 2012 was about 17.6% higher than the 1994 Comp Plan projected it to be. We also reviewed the School District's growth projections. That comparison is difficult since the School District projects specific growth rates by age and the City projects general growth rates with a few large age groups. The District projects growth rates for every grade level while the City lumps all population under 19 together into one large group. We did get the two as close together as we could, and we believe the District's growth projections to be very similar to the City's growth projections contained in the 2009 Comp Plan.

#### **Approval Process:**

State code requires the Development Impact Fee Advisory Committee to "file periodic reports, at least annually, with respect to the capital improvements plan and report to the governmental entity any perceived inequities in implementing the plan or imposing the development impact fees" (67-8205(3)(d)). This agenda item is the required annual report. No action is necessary.

#### **Budget Impact:**

No action is necessary for this agenda item. An automatic impact fee increase will occur in January in an amount equal to the change in the MCI from January 2012 to January 2013. That percent change through November 2012 is 1.7%.

#### **Regulatory Impact:**

This report completes the City's annual impact fee reporting requirement.

#### **Conclusion:**

Staff recommends that the Council review the Development Impact Fee Advisory Committee's annual report.

#### **Attachments:**

None