

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
Tuesday, January 22, 2013
 City Council Chambers
 305 3rd Avenue East - Twin Falls, Idaho

5:00 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:
I. <u>CONSENT CALENDAR:</u> 1. Consideration of a request to approve the accounts payable for January 15 – 22, 2013. 2. Consideration of a request to approve the January 14, 2013, City Council Minutes. 3. Consideration of a request to approve a resolution authorizing the destruction of records.	<u>Action</u>	<u>Staff Report</u> Sharon Bryan L. Sanchez Sharon Bryan
II. <u>ITEMS FOR CONSIDERATION:</u> 1. Consideration of a request from the Twin Falls Housing Authority to appoint Paulette Ellis to serve a term expiring February 15, 2016, and John Van Engelen to serve a term expiring February 13, 2018, as Commissioners. 2. Presentation of the City Pool Financial Report by Gary Ettenger, CEO of the YMCA. 3. Consideration of an agreement between the City and the Urban Renewal Agency regarding the use of downtown parking spaces. 4. Public input and/or items from the City Manager and City Council.	Action Presentation Action	Penny Earl/ Executive Director of Twin Falls Housing Authority Dennis Bowyer/ Gary Ettenger, YMCA Mitch Humble
III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u>		
IV. <u>PUBLIC HEARINGS:</u> 6:00 P.M. - NONE		
V. <u>ADJOURNMENT:</u> Executive Session: <ul style="list-style-type: none"> • To conduct deliberations concerning labor negotiations or to acquire an interest in real property, which is not owned by a public agency. 67-2345 (1)(c) • To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement. 67-2345 (1) (f) 		

****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.



Date: January 22, 2013 City Council Meeting

To: Honorable Mayor and City Council

From: Sharon Bryan, Deputy City Clerk

Request:

Consideration of a resolution authorizing the destruction semipermanent and temporary records.

Time Estimate: Consent Calendar

Background:

Destruction of semipermanent and temporary records.

Approval Process:

Adoption of the resolution requires a simple majority vote of the Council.

Budget Impact:

The Council's approval of this request will not impact the City budget.

Regulatory Impact:

The Council's approval of this request will comply with Idaho State Code 50-907 requiring that before the City can destroy any semipermanent or temporary records we need to get City Attorney and City Council approval as well as notify the Idaho State Historical Society before destruction of any records. This needs to be done by resolution. (See attached)

State Code 50-907

Semipermanent records shall be kept for not less than five (5) years after the date of issuance or completion of the matter contained within the record.

(3) "Temporary records" shall consist of:

- (a) Building applications, plans, and specifications for noncommercial and nongovernment projects after the structure or project receives final inspection and approval;
- (b) Cash receipts subject to audit;
- (c) Election ballots and duplicate poll books; and
- (d) Other documents or records as may be deemed of temporary nature by the city council.

Temporary records shall be retained for not less than two (2) years, but in no event shall financial records be destroyed until completion of the city's financial audit as provided in section 67-450B, Idaho Code.

(4) Semipermanent and temporary records may only be destroyed by resolution of the city council, and upon the advice of the city attorney. Such disposition shall be under the direction and supervision of the city clerk.

The resolution ordering destruction shall list in detail records to be destroyed. Prior to destruction of semipermanent records, the city clerk shall provide written notice, including a detailed list of the semipermanent records proposed for destruction, to the Idaho state historical society thirty (30) days prior to the destruction of any records.

Conclusion:

Staff recommends approval of the adoption of the resolution.

Attachments: Resolution

TWIN FALLS HOUSING AUTHORITY

200 NORTH ELM ♦ PHONE 208/733-5765 - 733-5878 TDD
TWIN FALLS, IDAHO
83301

January 9, 2013

Honorable Mayor and City Council:

In accordance with procedures, we are submitting the recommendation that Paulette Ellis be appointed as a commissioner for the Twin Falls Housing Authority.

Board members are volunteers and are not paid to serve. They gain and give a lot of knowledge, direction and expertise to the Authority. Board members work and vote on issues vital to furthering the Agency's mission. Board members come from all sectors of the community and lend diversity and strength to our effort.

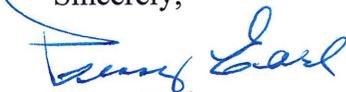
Paulette served as a board member of the Housing Authority from 2002 – 2004. She performed her duties with the highest degree of integrity and professional care in order to merit the respect of the beneficiaries of our programs, elected officials and the general public. Paulette feels that serving as a board member of the Housing Authority was a rewarding experience and has expressed an interest in serving once again.

Paulette has resided, worked and raised a family in this community in excess of 50 years. She and her deceased husband owned and operated a small motel for twenty years. She has a great business sense and understands the circumstances surrounding housing. Paulette has been an employee of the State of Idaho – Department of Health and Welfare for 22 years and is a Medicaid supervisor. Paulette works with the same population of clients that the Housing Authority serves.

We feel the Housing Authority and community would benefit from the assets that Paulette would bring with her as a board member and look forward to working with her once again.

Thank you for your consideration.

Sincerely,



Penny Earl
Executive Director

TWIN FALLS HOUSING AUTHORITY

200 NORTH ELM ♦ PHONE 208/733-5765 - 733-5878 TDD
TWIN FALLS, IDAHO
83301

January 10, 2013

Honorable Mayor and City Council:

In accordance with procedures, we are submitting the recommendation that John Van Engelen be appointed as a commissioner for the Twin Falls Housing Authority.

Board members are volunteers and are not paid to serve. They gain and give a lot of knowledge, direction and expertise to the Authority. Board members work and vote on issues vital to furthering the Agency's mission. Board members come from all sectors of the community and lend diversity and strength to our effort.

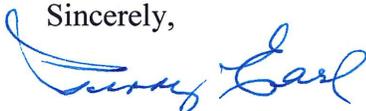
Mr. Engelen feels that serving as a board member of the Housing Authority would be a rewarding experience and has expressed an interest in completing a full term. He sees how valuable the service is that the Housing Authority provides to the people we serve. Mr. Van Engelen is an advocate for the provision of adequate and affordable housing and strong viable communities for those with low and moderate incomes.

John was born and raised in Twin Falls, graduating from Twin Falls High School. He then attended Boise State University where he graduated with a BBA in Accounting. He is a Certified Public Accountant, Certified Financial Planner, Chartered Life Underwriter and Chartered Financial Consultant. From Twin Falls he moved to Spokane, Washington for 25 years, lived in Topeka, Kansas for 5 years and Boise, Idaho for 6 years. He has returned to Twin Falls to join Pollow & Moore, CPAs. Prior to joining Pollow and Moore he held executive management positions in the insurance industry.

We feel that the Housing Authority and community would benefit from the assets that John would bring with him as a board member.

Thank you for your consideration.

Sincerely,



Penny Earl
Executive Director



Date: Tuesday, January 22, 2013 City Council Meeting

To: Honorable Mayor and City Council

From: Dennis J. Bowyer, Parks & Recreation Director

Request:

Presentation of the City Pool Financial Report by Gary Ettenger, CEO of the YMCA.

Time Estimate:

Gary Ettenger will make the presentation; it will take approximately 10 minutes. Following the presentation, we expect some time for questions and answers.

Background:

As part of the Concession Agreement between the City and the YMCA, an annual financial report is to be presented to the City Council. These reports of pool operations shall include all City Pool revenues, expenses, and attendance. Overhead charges shall be explained in detail and justified. City Pool revenues shall include daily admissions, annual pool passes, seasonal memberships, and that portion of overall Y memberships that are attributable to the City Pool.

Since the new concession agreement started in September 2011, staff and the YMCA decided to wait a full year under the new concession agreement before the YMCA would present the report.

City staff and Council members have met with the YMCA to figure out how full membership revenue should be credited as the pool revenue. The Y has memberships just for the pool and memberships for usage of all three of their facilities.

Last year the YMCA used a percentage of visits to the pool by full membership members compared with their other two facilities visits. The question is this the best and fairest way to figure out that revenue from full membership as part of the pool revenue? Staff, Council members and the YMCA met again to discuss this issue: the YMCA presented three (3) scenarios to discuss. Both sides have agreed to use the highest daily admission at the pool (\$4 for adults) and multiply that by the total number of visits by full membership members for the revenue that is credited to the pool. In future years, staff and the YMCA plans to use this method of crediting revenue to the pool from the YMCA's full membership revenue to be consistent from year to year.

John Pauley, Aquatics Director for the YMCA presented this report to the Parks and Recreation Commission at their December meeting. John Pauley, staff, and Council Liaison Shawn Barigar explained to the Commission the new accounting method on how a portion of the YMCA's full membership revenue would be credited to the pool. The Commission appreciated the effort staff and the YMCA has put into figuring out a fair and equitable way for a portion of the YMCA's full membership revenue would be credited to the pool. The Commission had some questions on the bank charges the YMCA was charging as expenditures to the pool. Approximately 25% of total revenue for the YMCA is from the operations of the pool, so the YMCA charges as expenditure to the pool 25% of their bank charges. The majority of those bank charges are for fees associated with the use of credit/debit cards.

Approval Process:

There is no approval process associated with this presentation.

Budget Impact:

There is no immediate budget impact associated with this presentation.

Regulatory Impact:

There is no regulatory impact associated with this presentation.

Conclusion:

This is a presentation by the CEO of the YMCA. No action is necessary.

Attachments:

YMCA's Financial Report from September 1, 2011 – August 31, 2012
Concession Agreement – City Pool

**Y/City Pool
 Profit & Loss
 September 2011 through August 2012**

	<u>Sep '11 - Aug 12</u>	
City Pool Revenue		
City of Twin Falls - Co-Op	119,982.10	
Daily Admissions	68,354.09	
Pool Rentals	7,942.76	
Safety Classes	4,373.00	
Sales - CP	4,409.44	
Swim Lessons	59,645.24	
Swim Team Y	12,225.00	
City Pool Revenue - Other	165.00	
Membership - CP	68,441.70	
Memberships - YMCA	<u>106,612.00</u>	\$4 Average. See Explanations #1.
Total Income	<u>452,150.33</u>	
Expense		
Accounting & Legal	247.50	
Bank Charges 25% of total	9,435.14	25% of total bank charges that the Y incurred.
Repairs/Maintenance	7,366.90	Only CP
Food	669.37	Bubble Up & Down
Janitorial Supplies	6,601.26	25%
Liability Insurance	3,000.00	33%
Office Expenses	5,907.69	25%
Payment to Affil Org	1,320.00	33%
Professional Salaries	31,150.04	AD 85%. See Explanations #2
Health Insurance % adjusted for each	7,536.43	15% CEO. 33% HR Dir., Desk Man., Mem. Cord., Acc. & Marketing Dir. See Explanations #2.
Administrative costs	46,591.24	Same as above. See Explanations #3
Retirement % adjusted for each	5,005.36	Same as above. See Explanations #3
Aerobic Instructor Wages	16,873.17	Only CP
Clerical Wages	38,128.37	Only CP
Lifeguard Wages	83,784.49	Only CP
Janitorial Wages	6,431.56	Only CP
Swim Lesson Wages	35,104.32	Only CP
City Pool - Other	1,155.95	Overtime, Sick & Vacation time.
Payroll Tax Expenses - FICA 7.65%	19,830.26	Only CP
Payroll Tax - Unemployment 3.360%	9,331.89	Only CP
Pool Chemicals	21,869.74	Only CP
Program Supplies	4,056.23	Only CP
Advertising	11,308.08	33%
Product Supplies	2,028.23	25%
Uniforms - Lifeguards	1,873.29	Only CP
Utilities	63,659.86	100% Gas, Electric, Security System & 33% of Internet
Workmans Comp 1.27%	3,292.08	Only CP
Total Expense	<u>443,558.45</u>	
Net Income	<u>8,591.88</u>	

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September 1, 2011 – August 31, 2012 Financial Explanations and Program Numbers

Financial Explanations

- * There were 26,653 YMCA Members that visited the pool from September 1, 2011 – August 31, 2012.
 - o We used the \$4 daily admission fee for adults because it is the highest admission fee and we know it cannot be higher than that. Multiplying 26,653 visits by \$4 it equals \$106,612 for the year period.
- ** Administrative costs & professional salaries are the percentage of each staff member's salary that was applied towards the pool. They are 85% for the Aquatics Director, 15% for the CEO, 33% for the Bookkeeper, 33% for the Membership Coordinator, 33% for the Marketing Director and 33% for the Front Desk Supervisor.
- *** Health Insurance and Retirement were calculated for the above staff and the Aquatics Director (85%) based off of the same percentages.

Program Numbers

- Lap & Open Swim Visits
 - o YMCA Members: 26,653
 - o Y/City Pool Members: 11,784
 - o General Admission: 20,781
 - o Total: 59,218
- Swim Lesson Participants
 - o Junior Lifeguard Camp: 28
 - o 3rd Grade Swim Program: 76
 - o Water Babies: 84
 - o 2nd Annual Dr. David Webster Free Spring Break Swim Lessons: 160
 - o Elite Swim Lessons: 299
 - o Swim Lessons: 1,165
 - o Total: 1,812
- Swim League
 - o Fall & Winter: 60
 - o Summer: 104
 - o Total: 164
- Safety Certification Classes
 - o Lifeguard Classes: 25
 - o Water Safety Instructor Classes: 8
 - o Total: 33

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COPY

CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT, made and executed this 31st day of August, 2011, by and between the City of Twin Falls, a municipal corporation of Idaho, hereinafter referred to as "City" and The YMCA of Twin Falls, Inc., hereinafter referred to as "the Y";

WITNESSETH:

WHEREAS, the City has heretofore granted a Concession Agreement in the City Pool, owned by the City and located within the corporate limits; and

WHEREAS, the Mayor and City Council have determined that it is in the community's best interest to continue said Concession Agreement to operate and manage the pool; and

WHEREAS, the City requested proposals from individuals/entities interested in entering into a Concession Agreement with the City; and

WHEREAS, the Y was selected by the City Council as having a qualified proposal and instructed staff to begin negotiations on a proposal that will be mutually acceptable to both parties.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **GRANT OF CONCESSION.** The City hereby grants to the Y the exclusive privilege or Concession of maintaining and operating the City Pool owned by the City and located within the corporate limits. During the period commencing September 1, 2011 and ending August 31, 2018, the Y shall maintain and operate the City Pool in accordance with the terms and conditions that follow herein. This Agreement may be renewed upon terms mutually agreed to by both parties. The City and the Y agree to review the terms of this contract at any time during the term of this Agreement, at the request of either party.
2. **USE FOR AQUATIC RECREATIONAL PROGRAMS.** The Concession premises and the facilities, fixtures, furnishings, and equipment located therein and thereon shall be used by the Y to conduct aquatic recreational programs for the citizens of Twin Falls and for other pool patrons. The Y may occasionally use the facilities for other activities, including parties, events, swim meets or other activities that are consistent with the operation of a public pool.

3. PAYMENT TO THE Y. The City shall pay the Y an operation and management fee of \$120,000 per year, payable in monthly installments of \$10,000.00 on the first day of each month beginning on September 1, 2011. Payments shall continue throughout the term of this agreement.

4. OPERATION. The Y shall be responsible for the operation and management of the City Pool in a manner that promotes longevity and meets any applicable state regulations.

The Y shall review, and update as necessary, the operations manual for the pool in order to ensure proper operation and maintenance. The pool operations manual shall be readily accessible. The operations manual shall include instructions for such items and maintenance schedules, records and reports, water chemistry, accidents, emergency procedures, care of filters, operation of pumps and other equipment, and the proper handling and storage of all chemicals used. The operations manual shall be reviewed for continued applicability and updated as necessary annually, beginning on the anniversary of the commencement of this agreement.

5. ADMISSION FEES AND REVENUE. The Y shall collect and retain fees for the use of the pool by the public. The Y shall keep posted at the pool, and include in a yearly informational booklet, a schedule of rates for all pool activities and programs. Water aerobics, lap swim, and open swim, are included programs in a Y membership and City Pool pass.

The fees charged by the Y shall not exceed the fees set forth on "Exhibit A" attached hereto and incorporated herein. Any changes to the admission fees or pool passes must be approved by the Pool Aquatics Advisory Board (discussed in section 7 below). The Board may provide for an annual increase in the maximum fee not exceeding 5% per year. Fee increase requests that exceed 5% per year shall be considered by the City Council following a recommendation by the Board.

6. POOL AQUATICS DIRECTOR. During the term of this Agreement, the Y shall employ a full time Aquatics Director who is familiar with the operation of the pool, is responsible for the health and safety of the public using the pool, and responsible for operating the pool and the Y/City aquatic programs. The Aquatics Director shall maintain at least one of the following certifications:

- Certified Pool Operator (CPO), National Swimming Pool Foundation

- Aquatic Facility Operator (AFO), National Recreation and Parks Association
- National Swimming Pool Institute (NSPI Tech 1), National Spa and Pool Institute

The operator and all lifeguards shall maintain all of the following certifications:

- Life Guarding
- Cardiopulmonary Resuscitation (CPR), and
- First Aid

The Y shall provide copies of current certifications upon request of the City Manager, or designee.

7. POOL AQUATICS ADVISORY BOARD. The City's Parks & Recreation Commission shall be appointed to perform the duties of a Pool Aquatics Advisory Board. In addition to regular Commission members, the following persons shall be ex-officio members when performing Board duties: City Manager or designee, the C.E.O. of the Y or designee, and the Aquatics Director. The purpose of the Board shall be to review citizen complaints and to advise and recommend to the City Council and the Y matters concerning the operations, aquatics programs and facility needs of the City Pool.

8. SCOPE OF CONCESSIONS TO BE PROVIDED. The scope of this Concession includes a License to go upon and use the Concession premises for the purpose of conducting a swimming program, with the necessary rights and responsibilities thereon.

A. Y Duties:

- (1) Provide swimming lessons, primarily to youth.
- (2) Provide aquatic fitness and therapy opportunities.
- (3) Provide open swim hours for the general public.
- (4) Provide lap swim hours for the general public.
- (5) Solicit, facilitate, and provide for swim meets and other special swim events.
- (6) Provide support and assistance for organized youth swim teams and associations.
- (7) Coordinate with the local high schools for team practices and meets.
- (8) Manage and oversee pool security.
- (9) Provide a safe environment for the swimming public and employees.
- (10) Promote and market the pool facility.

- (11) Assist with planning and execution (if possible) with any capital improvements and renovation to the pool facility.
- (12) Provide all necessary supplies, materials, equipment and appropriate staff necessary to manage, operate and maintain the pool facility.
- (13) Provide chemicals necessary to maintain water chemistry and provide staff to check water chemistry and perform adjustments as necessary.

B. Janitorial, Repairs, and Alterations:

- (1) The Y shall be responsible for the daily janitorial and cleaning of the City Pool, including, but not limited to, locker rooms, office, pool deck, wading pool, equipment, fixtures, and contents of the facility.
- (2) It is the intent of the parties that capital expenditures shall be the obligation of the City and the "day-to-day" maintenance costs shall be the obligation of the Y. For example, a remodel of the restroom facilities would be a capital expenditure but the repair of a sink or toilet fixture would be a "day-to-day" maintenance. Capital expenditure as used herein shall be defined as any expenditure that extends the life of a City facility, such as replacing the bubble, and includes structural damage repairs, the expansion of structures or systems, the remodel of structures or systems, the replacement of water heating or water quality equipment, and the complete asphalt overlay of the parking area. In the event of a dispute between the parties regarding the classification of an expense as either a 'day-to-day maintenance expense' or a 'capital expenditure', the parties agree to negotiate with each other in good faith to resolve the dispute in a fair and equitable manner.
- (3) The Y is required, at its sole cost and expense, to maintain and operate the pool facility in a good and safe condition in accordance with industry standards. This includes the maintenance and repair of the pool; all interior and exterior structures; building systems; utility systems and connections; equipment; restrooms; pool accessories (slide, ladders, etc...); lighting; and fixtures.
- (4) The Y shall be expected to provide an adequate staff to maintain the pool facility in excellent physical condition and appearance.

- (5) No permanent alterations shall be made to the pool facility without written approval from the City. Any such alteration approved by the City will become the property of the City upon termination of this agreement.

C. Utilities:

The Y shall pay all utility expenses for the operation of the pool, including telephone, electricity, and natural gas. The City will provide sanitation, water, and sewer utility services at no cost to the Y.

D. Days of operation:

The Concession premises shall be open to the public on Memorial Day, Independence Day, and Labor Day.

9. CITY TO MAINTAIN PREMISES. The City shall be responsible for the repair of the facility and equipment, including, but not limited to, pumps, motors, chemical feed equipment of the boilers, bubble blower unit, the bubble, the landscaping, the sprinkler system, pool water chemistry systems, the structural components of the plumbing electrical, and HVAC systems, the diving boards and fencing at the City Pool. The City will perform regular inspections of the facility and equipment described above. The City will also install and take down the seasonal cover, or bubble, each year.

The Y shall notify the City on a timely basis of facilities and equipment requiring repair. The City shall make all repairs on a timely basis and in a manner that minimizes impact on the use of the facility.

The City reserves the right to enter upon the Concession premises at any reasonable time in order to ensure compliance with the terms of this Concession Agreement. The City reserves the right to inspect, investigate, and survey the Concession premises as deemed necessary, and reserves the right to do any and all work of any nature necessary for preservation, maintenance, and operation of the premises. The Y shall be liable for all expenses incurred by the City for work done by the City in order to preserve, maintain, and operate the Concession premises, when, after giving notice of default, such work is necessary to remedy the Y's negligence or non-compliance with the terms of this Agreement.

10. FINANCIAL REPORTING. The Y shall provide to the Pool Aquatics Advisory Board and the City Council quarterly reports of pool operations and annual Y financial statements for the year ending Dec. 31, 2011, and annually thereafter. These reports of pool operations shall include all City Pool revenues, expenses, and attendance. Overhead charges shall be explained in detail and justified. City Pool revenues shall include daily admissions, annual pool passes, seasonal memberships, and that portion of overall Y memberships that are attributable to the City Pool.

11. FACILITIES USE AGREEMENT. In recognition of the Facilities Use Agreement and property lease that exists between the City and the Twin Falls School District #411 (T.F.S.D.) the Y shall give priority to the requests for use of the facility by all school affiliated programs and events, including but not limited to, swim clubs, physical education classes, P.T.A/O. groups, class parties and reward programs of the T.F.S.D. Additionally, contracts with T.F.S.D. and its programs for regularly scheduled pool space and times must be approved by the Pool Aquatic Advisory board prior to execution and before the start of the program when possible. The Board will respond by its next scheduled meeting or within 30 days from the date of request.

12. USE OF CITY'S FIXTURES, FURNISHINGS AND EQUIPMENT. The License granted hereunder includes exclusive right to manage and use the facilities, fixtures, and furnishings owned by the City and currently located on the Concession premises. All pool equipment can only be used on the pool facility or other City facilities. Said furnishings and equipment are listed in Exhibit "B", attached hereto and incorporated herein. The Y shall provide all additional facilities, fixtures, furnishings and equipment and personal property necessary for the operation of swimming and aquatic programs, not set out in Exhibit "B". Any such additional facilities, fixtures, furnishings and equipment and personal property not listed in Exhibit "B", but located at the pool facility, are property of the Y. At least once each year, a physical inventory of the City's fixtures, furnishings, and equipment shall be taken and a copy delivered to the City Parks and Recreation Director. The Y shall notify the City of any missing items or any discrepancies found regarding the inventory lists.

Upon termination of this Concession Agreement, all fixtures and furnishings owned by the City shall remain on the premises. The Y shall return all City-owned fixtures and furnishings

in as good of a condition as said fixtures and furnishings were in as of the date this Agreement, reasonable wear and tear excepted.

The City reserves the right to carry out any redesign, remodeling, reconstruction, or new construction on the Concession premises which it deems advantageous to the long-term operations of the facility, if such modification can be accomplished without substantial interference with the Y operations. Whenever possible, the City shall provide the Y 30 days notice before beginning any remodel or modification. The timing, extent, and nature of any improvements shall be solely within the discretion of the Mayor and Council of the City.

13. ACCEPTANCE OF PREMISES BY THE Y. The Y has accepted the premises as is. The Y agrees to return the premises and the facilities, fixtures, furnishings, and equipment not owned by the Y to the City in a condition as good as when accepted by the Y, reasonable wear and tear excepted.

14. COMPLIANCE WITH LAWS. The Y shall strictly comply with all Federal, State and local laws, rules, regulations, and ordinances, including those governing the operation of a public swimming pool. The Y agrees not to permit or allow any illegal business, trade or occupation in or on the Concession premises and shall not permit the premises to be occupied by or used for any immoral or illegal purposes.

15. INDEMNIFICATION. The Y agrees that it will at all times maintain Worker's Compensation coverage for the benefit of its employees, and adequate liability and property damage insurance as specified in Section 16 below covering the activities of the Y, its agents, servants and employees, on the leased premises. The Y further agrees to defend, indemnify, and save the City, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of the Y, its agents, servants, invitees, officers, and employees, in connection with this Concession Agreement.

16. DIVING BOARD. The parties hereby acknowledge that the swimming pool depth below the diving boards at the swimming pool is ten feet (10'). This depth meets Idaho Code. However, the requirement for Y swimming pools is 11 feet, 6 inches (11'6"). As such, the City hereby agrees to indemnify and hold harmless the Y, its employees and agents, of and from any

claim or causes of action arising out of or related to injury or damages to persons hitting the bottom of the pool under the diving boards as a result of the use of the diving boards. This is a specific exemption to paragraph 15 above.

17. INSURANCE. In order to effectuate the foregoing indemnification provisions, the Y shall maintain insurance coverage as follows:

- A. The Y shall purchase public liability insurance in the amount of \$500,000 combined single limit to protect the City from any and all public liability claims. The City shall be named as an additional insured or be acknowledged by the Y's insurance carrier as a covered entity under the terms of said policy. Moreover, the Y is required to put its surety on notice that said surety may not change or cancel the existing insurance policy with the Y without first giving the City at least thirty (30) days written notice.
- B. The Y shall purchase personal property insurance in an amount sufficient to insure any and all of its personal property which might be used in the Y's operation of the business.
- C. The Y shall purchase Worker's Compensation insurance or the equivalent as required by Idaho Code.
- D. A Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Deputy City Clerk prior to or at the time of execution of this Concession Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section 15 "Indemnification." The Y's failure to maintain insurance shall be a basis for immediate termination of this Concession Agreement.

18. PAYMENT OF TAXES. The Y shall pay all taxes, if any, which may be imposed by proper authority upon the Concession premises, or the facilities, fixtures, furnishings, equipment and personal property therein and thereon, including, if applicable, ad valorem, income, sales, and payroll taxes. However, nothing herein shall preclude the Y or the City from challenging in good faith the validity of any tax imposed upon the Concession premises, the facilities, fixtures, furnishings, equipment, or personal property therein and thereon.

19. Y'S INDEPENDENT CONTRACTOR STATUS. It is understood and acknowledged by the parties that the relationship of the Y to the City is that of an independent contractor. The Y

shall have no authority to employ any person as an employee or agent for or on behalf of the City for any purpose, except as otherwise provided herein. Neither the Y nor any person engaging in any work relating to this Concession at the request of or with the consent of the Y, shall be deemed an employee or agent of the City, nor shall any such person or persons represent himself, herself, or themselves to others as an employee or agent of the City.

When ordering any goods or services for this Concession, the Y shall place such order in its own name or business name and not in the name of the City. The Y shall notify its vendors of the independent relationship between the parties to this Concession Agreement and shall advise its vendors that the Y is solely responsible for the goods or services purchased.

20. PAYMENT OF BILLS. The Y shall promptly pay all bills arising from the Y's operation of this facility. It is expressly understood that the Y is a licensee and independent contractor of the City. As such, the City shall in no way be responsible for any bills or obligations whatever incurred by the Y in the operation of the facility under this Concession Agreement.

21. PERMITS AND LICENSES. The Y shall obtain and maintain at its own expense any permits and licenses that may be required by competent authority for the operation of this facility.

22. NON-DISCRIMINATION. The Y shall fully comply with the Federal Equal Employment Act and other State and Federal laws requiring the fair, equal, and non-discriminatory treatment of all persons without regard to race, color, religion, sex, age or national origin. The Y represents, certifies and agrees that no person shall be denied or refused service or full or equal use of the facilities, nor denied employment opportunities by the Y, as a result of race, creed, color, religion, sex, age, national origin, ancestry, physical or mental handicap unrelated to ability, or marital status.

23. Y EMPLOYEES. The Y shall operate this Concession and shall employ sufficient and qualified personnel to operate the Concession in a businesslike manner. The pool facility shall be staffed with at least one aquatics director, as required above, along with other personnel adequate for the operation of the facility. In the event of a voluntary or involuntary termination of an aquatics director that places the Y out of compliance with this paragraph, the Y shall immediately exercise its best efforts to come into compliance with this paragraph.

Safety of Y employees shall be a primary concern of the Y. All employees shall be provided necessary safety training and equipment, and the Y shall require that its employees use the same at all reasonable times.

24. PARKS AND RECREATION DIRECTOR CITY'S REPRESENTATIVE. The Parks and Recreation Director of the City, working with the advice of the Pool Aquatics Advisory Board shall represent and manage the City's interest in the Concession premises. The Director may make reasonable written requests regarding the operation of this Concession to ensure compliance with the terms of this Concession Agreement, with which requests the Y shall comply.

25. NON-ASSIGNMENT. This Concession Agreement shall not be assigned in whole or in part nor shall the Concession premises or any part thereof be sublicensed, nor shall any right or privilege herein granted to the Y be sold, transferred or assigned, without the prior written approval of the City. Any such transfer, sale or assignment, whether voluntary or involuntary, without the written approval of the City, shall be void and shall constitute grounds for the cancellation of this Concession Agreement at the option of the City.

26. MODIFICATIONS OF LICENSE. This Concession Agreement sets forth all of the agreements between the parties hereto, and no change, modification, or amendment thereof shall be valid and binding unless set forth in writing and signed by the City and the Y.

27. TERMINATION.

A. If, in the judgment of the City, the Y breaches or is in default of any term of this Concession Agreement, the City shall give the Y written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the Y fails or refuses to take reasonable steps to remedy such unsatisfactory performance or default within thirty (30) days after receipt of said notice, the City may terminate this Concession Agreement. If such breach or default is incapable of being remedied, the City may automatically terminate the Concession Agreement granted herein upon written notice to the Y of the breach or default.

B. If, in the judgment of the Y, the City breaches or is in default of any term of this Concession Agreement, the Y shall give the City written notice specifying with

reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the City fails or refuses to remedy such unsatisfactory performance or default within thirty (30) days after receipt of said notice, the Y may seek whatever remedy is available at law or in equity.

C. Notwithstanding the foregoing, the City and the Y shall have the absolute right to terminate this agreement by giving written notice one hundred eighty (180) in advance of the termination.

28. DESTRUCTION OF PREMISES. In the event the Concession premises are damaged by fire or other casualty to such an extent that the continued use of the premises by the Y is not desirable, the City or the Y may immediately terminate this Concession Agreement. The City may, but is not obligated to, repair or rebuild the Concession premises. In that event, if any portion of the original Concession Agreement period remains, the Y, upon written notice, shall resume operation of the Concession in accordance with this Concession Agreement.

29. REMOVAL OF PROPERTY ON TERMINATION. In the event this Concession Agreement expires or is terminated as herein provided, the Y shall immediately vacate the Concession premises and shall remove (a) all fixtures and personal property not on the inventory in Exhibit "B", (b) all fixtures and personal property not purchased to replace such inventory in Exhibit "B", and (c) all fixtures and personal property in which the Y holds actual title. Should the Y fail to remove or dispose of such property as herein provided, the City may consider it abandoned and may claim proper title to it or dispose of the same at the Y's expense.

The Y shall quit and surrender the said premises and shall leave the City's fixtures, equipment, furnishings, and personal property in as good or better condition as when accepted by the Y, reasonable wear and tear excepted. Removal of any fixtures and improvements attached to the structures on the Concession premises shall not leave the structures in a worse condition than at the time of the execution of this Concession Agreement.

30. LIENS AND ENCUMBRANCES. The Y shall keep the Concession premises, including all City-owned facilities, City-owned furnishings, City-owned fixtures, City-owned equipment and other City-owned property therein and thereon, free and clear from any liens and encumbrances arising from or growing out of the Y's use of the Concession premises. At the

City's request, the Y shall furnish the City's Chief Financial Officer written proof of payment of any item which might constitute the basis for such a lien on the premises, facilities, fixtures, furnishings, equipment or other property.

31. TERMINATION UPON BANKRUPTCY. Except, to the extent prohibited by applicable law, upon the occurrence of any one or more of the following events the Concession Agreement granted herein shall be deemed to have terminated automatically:

- A. The filing by the Y of the voluntary Petition in bankruptcy or the making of an assignment for the benefit of creditors; or
- B. The filing of an involuntary bankruptcy Petition against the Y that is not withdrawn or dismissed within ten (10) days; or
- C. A consenting by the Y to the appointment of a receiver or trustee of all or part of the Y's assets; or
- D. The filing by the Y of a Petition or Answer seeking an arrangement or reorganization under the Federal Bankruptcy Act or any other applicable State or Federal law; or
- E. The filing by the Y of a Petition to take advantage of any insolvency law or act.

32. NON-WAIVER OF BREACH. The waiver by the City of any breach by the Y of any provision contained in this Concession Agreement shall not be deemed to be a waiver of such provision or any subsequent breach of the same.

33. WRITING IS ENTIRE AGREEMENT. This Concession Agreement constitutes the entire agreement between the parties. No evidence of any prior or contemporaneous agreements, written or oral, may be used to modify the express terms of this writing.

34. SEVERABILITY. If any provision or portion of any provision of this Concession Agreement shall be deemed illegal or unenforceable by a Court of competent jurisdiction, the unaffected provisions or portions thereof shall remain in full force and effect.

35. JURISDICTION AND VENUE. Any action or proceeding relative to this Lease Agreement shall be maintained in the District Court, Fifth Judicial District County of Twin Falls, State of Idaho.

C-4373

36. NOTICE. All notices under this Concession Agreement shall be deemed to be properly served if sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by written notice, said addresses shall be as follows:

City of Twin Falls
Attn: Parks and Recreation Director
P.O. Box 1907
Twin Falls, ID 83303-1907

YMCA of Twin Falls, Inc.
Attn: C.E.O.
1751 Elizabeth Blvd.
Twin Falls, ID 83301

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.

37. ATTORNEY'S FEES UPON BREACH. In the event it becomes necessary for either party to enforce the terms of this Concession Agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is \$150.00 per hour.

IN WITNESS WHEREOF, the parties hereto have executed this Concession Agreement by and through their authorized representatives the day and year first-above written.

CITY OF TWIN FALLS, a municipal corporation of Idaho

[Signature]
DON HALL, Mayor

ATTEST:

[Signature]
Deputy City Clerk August 28, 2011

YMCA of Twin Falls, Inc.

[Signature]
Michael Aresc President

STATE OF IDAHO)
 :SS
County of Twin Falls)

On this 30th day of August, 2011, before me, the undersigned, a Notary Public in and for the State, personally appeared M. Aresc the authorized agents for the YMCA of Twin Falls, Inc., known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

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

(SEAL)



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing in: Twin Falls, Idaho
My Commission Expires: June 16, 2014

C-437B

**EXHIBIT "A"
MAXIMUM FEES**

Daily Admissions:

Youth 3 years and under	\$3.00
Youth 4 – 17 years	\$4.50
Adult	\$6.00

Annual Passes:

Adult	\$260.00/year or \$31.50/month, plus tax and a \$50 joiner fee
Family	\$350.00/year or \$38.50/month, plus tax and a \$50 joiner fee
Youth (under 18 years)	\$237.50/year or \$29.50/month, plus tax and a \$50 joiner fee

Rental Rate:

\$170.00/hour – actual rental charge will depend on the percentage of the pool used

EXHIBIT "B"
INVENTORY OF CITY OWNED FACILITIES

The City of Twin Falls is the owner of the pool and its related attachments (ladders, slide, diving boards, etc...) and all of the existing buildings, including all the fixed equipment. Fixed equipment includes but is not limited to HVAC equipment, boilers, chemical control systems, UV system, bathroom/plumbing fixtures, counters, and fire suppression equipment, etc.

In addition to the above named items, the City of Twin Falls owns the following equipment and items:

- Seasonal cover or bubble and associated fixtures (lights, blower, assembly hardware, canopy connections to building, etc...)
- Pool blankets
- Guard stands
- Lane line reels
- Picnic area shelter
- Picnic tables
- Bounce house
- Tarp Reels
- Pool Vacuum



Date: Tuesday, January 22, 2013
To: Honorable Mayor and City Council
From: Mitch Humble, Community Development Director

Request:

Consideration of an agreement between the City and the Urban Renewal Agency regarding the use of downtown parking spaces.

Time Estimate:

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

Background:

Recently, the City incorporated significant program changes to the downtown parking management program. These changes included a shift from a leasing program to the sale of parking passes. As we implemented the program changes, there were several agreements, both formal and informal, that had been in place regarding downtown parking that we've had to find a way to accommodate in the new parking pass program. One of those agreements involved the Urban Renewal Agency (URA) and the VA medical center (VA), located at 260 2nd Ave. East.

The URA owns the property where the VA is located. The VA operates from that location with a lease agreement. That lease agreement obligates the URA to provide 26 parking spaces for the VA. There are 2 parking spaces on the URA property. The remaining 24 parking spaces had been provided in the public parking lot located behind the VA, known as the "blue lot." The blue lot is a City owned parking lot included in the downtown parking management plan. There are 9 parking spaces directly adjacent to the VA that have been signed as VA parking. These spaces are identified on the parking management plan map for the Blue Lot. The remaining 15 parking spaces just came out of the public lot since the VA began leasing the property in 2000.

The City has no obligation in the lease between the VA and the URA. However, the City has been working with the URA for years to help them meet their parking obligation. In reviewing the parking program to make the changes to the parking passes, we realized that the City and URA should formalize the parking arrangement for the VA. City staff has worked with the URA to prepare the attached parking agreement. The agreement was approved by the URA Board at their 1/14/13 meeting. The agreement states the following:

1. The URA owns a portion of what is known as the "purple lot." The purple lot has been a part of the City's downtown parking program, despite being owned by the URA. This agreement officially gives the City the ability to manage parking within the purple lot and collect revenues from parking pass sales used in the purple lot.
2. The agreement officially designates the 9 spaces in the blue lot adjacent to the VA building as VA parking. Should the VA vacate the building, then these 9 spaces would revert to public spaces.
3. The agreement obligates the City to provide 7 parking passes to the URA in exchange for the 7 parking pass parking spaces located in the purple lot. The URA can then provide these 7 spaces to the VA. Again, if the VA vacates the building, the City would no longer provide the 7 spaces to the URA.
4. The agreement says that the City will sell the URA additional parking passes as needed for the URA to provide the obligated parking spaces to the VA. These passes would be sold to the URA at the established rate.

It is a fairly simple and straightforward agreement. The agreement was prepared by the City Attorney. Staff supports the agreement and recommends that the Council approve it as presented.

Approval Process:

A majority vote of the Council is needed to approve this request. The agreement has already been approved by the Urban Renewal Agency Board.

Budget Impact:

As discussed above, the agreement says that the City will provide 7 annual parking passes to the URA at no cost. The value of 7 annual parking passes is \$1,540. The agreement also says that the URA will purchase additional parking spaces as needed to satisfy the needs of the VA. Currently, the URA plans to purchase 7 additional parking passes.

Regulatory Impact:

Approval of the agreement will generally formalize a relationship with the URA that has been in place since the City began managing the downtown parking lots in 2008. However, the agreement will lead to the URA purchasing 7 additional parking passes that had not been purchased in the past.

Conclusion:

Staff recommends that the Council approve the attached agreement as presented.

Attachments:

1. Proposed Agreement
2. Aerial Location Map
3. Parking Layout Map for Blue Lot

PARKING AGREEMENT

This Agreement is entered into this ___ day of _____, 2013, by and between the City of Twin Falls, Idaho (“City”), and the Urban Renewal Agency of the City of Twin Falls, Idaho (“URA”).

WHEREAS, URA owns certain real property immediately adjacent to property owned by the City and currently used by the City for accommodation of seven public parking spaces; and,

WHEREAS, URA has entered into a lease agreement with another party (VA), which includes a requirement of provision of parking spaces; and,

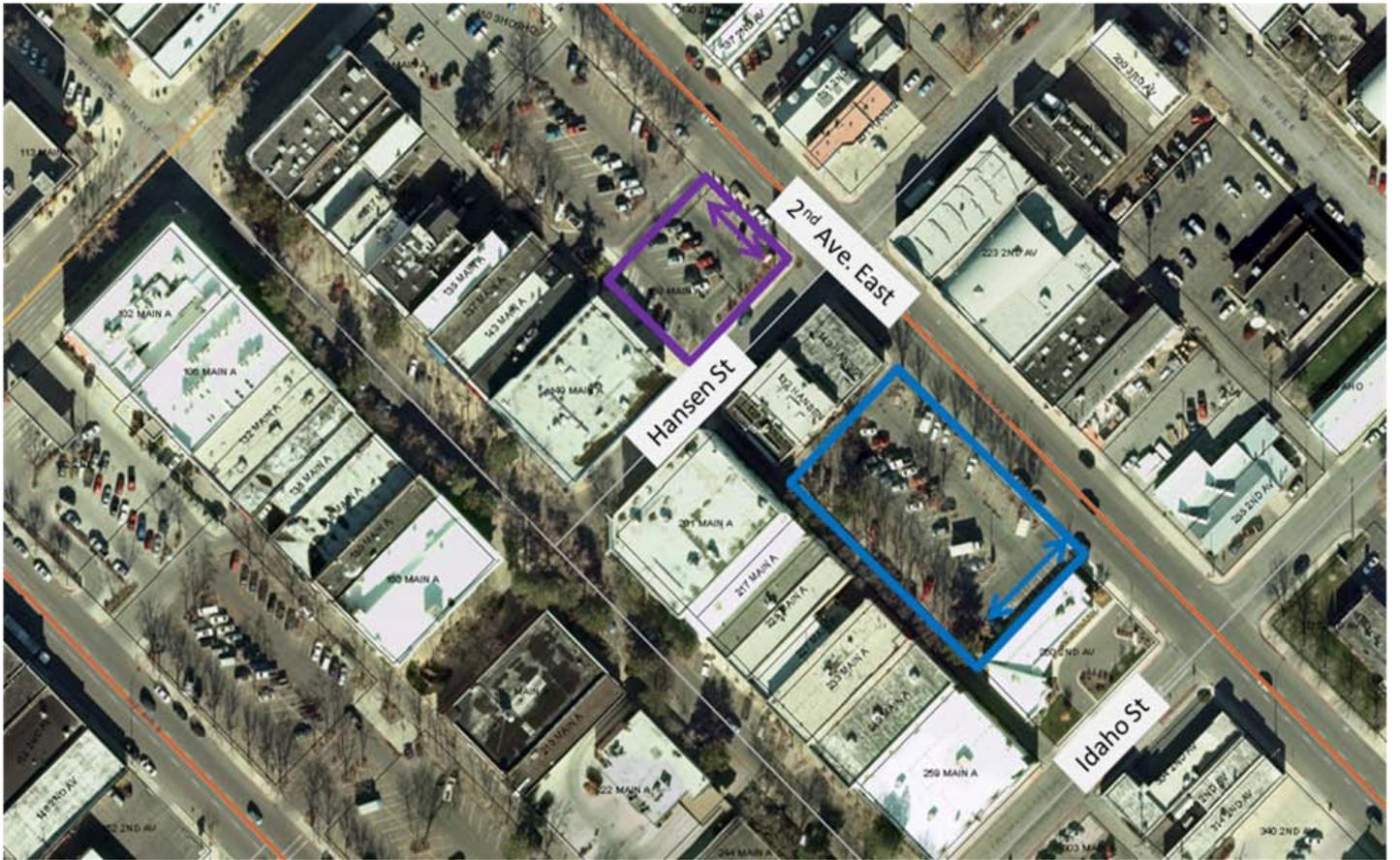
WHEREAS, URA owns additional real property currently used for parking, but managed by the City.

NOW, THEREFORE, The parties hereto agree as follows:

1. URA agrees to permit the City to use the parking spaces (in the “Purple Lot” behind the old Rogerson Hotel) for its public parking program, in exchange for the spaces and parking passes provided by the City to URA, as set forth below.
2. City agrees to permit the URA to use the parking spaces in the public parking lot (nine spaces) immediately adjacent to the VA Clinic, for as long as URA leases its property to the VA for a clinic.
3. City agrees to provide URA with seven (7) parking passes, so long as URA leases its property to the VA for a clinic.
4. URA may purchase additional parking passes as available and as needed, in exchange for the fees established by the City Council for public parking passes.

Greg Lanting, Mayor
City of Twin Falls

Gary Garnand, Chair
Urban Renewal Agency



HANSEN STREET E.

2ND AVENUE EAST



BLUE LOT

1040 STREET E.

BANNER FURNITURE

MUSIC CENTER

ADVANTAGE ARCHERY

