

COUNCIL MEMBERS:

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



**AGENDA**  
Meeting of the Twin Falls City Council  
**December 23, 2013**  
City Council Chambers  
305 3<sup>rd</sup> 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:  |
|---|--|--|
| <b>I. <u>CONSENT CALENDAR:</u></b><br>1. Consideration of a request to approve the accounts payable for December 16 – 23, 2013.<br>2. Consideration of a request to approve the November 25, 2013, City Council Minutes.<br>3. Consideration of a request to approve the Roadway Construction and Maintenance Agreement for Fillmore Street between Canyon Springs Road and Blue Lakes Blvd., with Canyon Park Development, LLC.  | <u>Action</u>  | <u>Staff Report</u><br>Sharon Bryan<br>Leila Sanchez<br>Troy Vitek   |
| <b>II. <u>ITEMS FOR CONSIDERATION:</u></b><br><br>1. Consideration of a request from Doris Ryall to purchase a portion of City owned lot located at 2617 Paintbrush Drive.<br>2. Consideration of a request to initiate a Special Use Permit Application for a new tourist information center to be located on property the City leases from the Idaho Transportation Department and operated by the Chamber of Commerce.<br>3. Discussion of estimates of development costs for the Evel Knievel jump site.<br>4. Update of security plans for the canyon jump that may be taking place in 2014.<br>5. Discussion of the first draft of the Agreement with Beckley Media to use Twin Falls City property in his effort to jump the Snake River Canyon. <i>This will not be an action item.</i><br>6. Public input and/or items from the City Manager and City Council. | Action<br><br>Action<br><br>Discussion<br><br>Update<br><br>Discussion | Doris Ryall /<br>Jonathan Spendlove<br><br>Jonathan Spendlove<br><br>Dennis J. Bowyer<br><br>Brian Pike<br><br>Travis Rothweiler<br>Fritz Wonderlich |
| <b>III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u></b>  |  |  |
| <b>IV. <u>PUBLIC HEARINGS:</u>      6:00 OR 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.

**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>    |               |                     |                  |



**MINUTES**  
**Meeting of the Twin Falls City Council**  
**Monday, November 25, 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: None**  
**PROCLAMATIONS: None**

| AGENDA ITEMS  | Purpose    | By:                   |
|---|------------|-----------------------|
| <b>I. <u>CONSENT CALENDAR:</u></b>  |            |                       |
| 1. Consideration of a request to approve the accounts payable for November 19-25, 2013.   | Action     | Sharon Bryan          |
| 2. Consideration of a request to approve the October 17, 2013 and November 13, 2013, City Council Minutes.  | Action     | Leila A. Sanchez      |
| 3. Consideration of a request to approve the Findings of Fact, Conclusions of Law, and Decision for Annexation for the City of Twin Falls.                                      | Action     | Mitchel Humble        |
| 4. Consideration of a request to approve a Beer and Wine License ownership transfer Jeremy Sudik dba Scooter's, 137 2nd Avenue East.  | Action     | Sharon Bryan          |
| <b>II. <u>ITEMS FOR CONSIDERATION:</u></b>  |            |                       |
| 1. Consideration of a request to approve the November 5, 2013, election results and Twin Falls County's Canvass.  | Action     | Sharon Bryan          |
| 2. Consideration of a request to approve the independent contractor contract with Wonderlich and Wakefield for City Attorney services as defined in Idaho Code Section 50-208A. | Action     | Travis Rothweiler     |
| 3. Consideration of a request to approve a resolution declaring a policy of transparency and openness in city government.   | Action     | Don Hall/<br>Jim Munn |
| 4. Discussion on the "Jump the Canyon" Request for Qualifications proposals.  | Discussion | City Council          |
| 5. Public input and/or items from the City Manager and City Council.  |            |                       |
| <b>III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u></b>  |            |                       |
| <b>IV. <u>PUBLIC HEARINGS:</u> None</b>   |            |                       |
| <b>V. <u>ADJOURNMENT:</u></b>   |            |                       |

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

Present: Shawn Barigar, Don Hall, Suzanne Hawkins, Greg Lanting, Jim Munn, Rebecca Mill Sojka, Chris Talkington  
Absent: None  
Staff Present: City Manager Travis Rothweiler, City Attorney Fritz Wonderlich, Assistant to the City Manager Mike Williams, PIO Josh Palmer, Deputy City Clerk Sharon Bryan, Deputy City Clerk/Recording Secretary Leila A. Sanchez

Mayor Lanting called the meeting to order at 5:00 P.M. He then invited all present, who wished to, to recite the pledge of Allegiance to the Flag with him. A quorum was present. Mayor Lanting introduced staff.

**CONSIDERATION OF THE AMENDMENTS TO THE AGENDA: None**  
**PROCLAMATIONS: None**

### AGENDA ITEMS

#### I. CONSENT CALENDAR:

1. Consideration of a request to approve the accounts payable for November 19-25, 2013, total: \$374,121.70. Payroll, November 22, 2013, \$115,934.44
2. Consideration of a request to approve the October 17, 2013 and November 13, 2013, City Council Minutes.
3. Consideration of a request to approve the Findings of Fact, Conclusions of Law, and Decision for Annexation for the City of Twin Falls.
4. Consideration of a request to approve a Beer and Wine License ownership transfer to Jeremy Sudik dba Scooter's, 137 2nd Avenue East.

**MOTION:**

Vice Mayor Hall made the motion to approve the consent calendar as presented. The motion was seconded by Councilperson Hawkins and roll call vote showed all members present voted in favor of the motion.

#### II. ITEMS FOR CONSIDERATION:

1. Consideration of a request to approve the November 5, 2013, election results and Twin Falls County's Canvass

Deputy City Clerk Sharon Bryan explained the request.

State Code 34-1410 requires that the County Clerk certify the election results to the city. The election results by precinct must be included in the council meeting minutes in November or December.

The election results declared the winners as follows:

Seat 1 Suzanne Hawkins with 1,007 votes

Seat 6 Don Hall with 1,337 votes

Seat 5 Gregory L. Lanting with 1,281 votes

Mayor Lanting stated that Sharon Bryan was honored at the AIC Training for New Officials for serving the City of Twin Falls for 37 years.

**MOTION:**

Councilperson Munn made the motion to accept the election results by precinct as indicated by the City Clerk. The motion was seconded by Councilperson Barigar and roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

2. Consideration of a request to approve the independent contractor contract with Wonderlich and Wakefield for City Attorney services as defined in Idaho Code Section 50-208A.

City Manager Rothweiler explained the request.

During the development of the FY 2014 Budget, members of the City Council asked to review the City Attorney contract. As a part of that process, they asked the City Attorney to share his workload and tasks to get a true idea of what he and the Firm do for the City. Additionally, the City Attorney requested the City explore the possibility of increasing the Firm's compensation package to be more

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reflective of the level of compensation that his peers receive and more commensurate with the Firm's legal experience. The City Attorney is appointed by and works under the general direction of the City Council. Fritz Wonderlich has served as the City Attorney from 1983 to 1985 and from 1987 to the present. The Firm has provided prosecutorial services since 1989.

A committee was established and charged with the tasks of reviewing the performance of the Firm (Wonderlich & Wakefield) and addressing the compensation issue. The committee included Twin Falls City Council members Don Hall, Shawn Barigar, and Suzanne Hawkins, and City Staff Travis Rothweiler and Susan Harris. The committee has discussed and reviewed the current workload with the City Attorney, discussed the Firm's strengths and opportunities with internal and external partners, and reviewed the compensation issue.

The contract recommends an immediate compensation adjustment of \$75,000. New effective compensation for Firm would be \$266,580, an increase of 43.32% over FY 2013 compensation and 39.15% more than what was budgeted for FY 2014. In each of the next four years, the City will commit to provide a 5.0% annual adjustment.

Vice Mayor Hall stated that he met with County Prosecutor Grant Loebs, who stated that it would take two attorneys to prosecute and adjudicate the City of Twin Falls cases. The committee found that the cost for services would be more than what the contract is offering the Firm.

Council discussion followed:

- Criteria of the cities chosen for comparison to receive the per capita costs
- Concept of the prosecutor side of the contract
- Bond hearings and sentencing

Fritz Wonderlich stated that he does not attend bond hearings or sentencing hearings nor does the County prosecutor. The judges set the bond and set the sentencing. The City Attorney does not have any influence at the bond and sentencing hearings.

Councilperson Hawkins said that various City department heads stated the importance of Fritz Wonderlich being accessible at all hours and days of the week and the importance of the consistency level the Firm brings. The committee also looked at the cost of hiring in-house attorneys doing prosecution work only or hiring it out by contract, and it was found that there was no way to get the same level of service with the same price that the Firm is offering.

Councilperson Barigar commented that the expertise the Firm brings the City serves the needs of internal staff and the Council that uses those services and as a result benefits the citizens of Twin Falls. Through this process it became evident very quickly that no matter what tool was used to measure compensation, there is inequity in the compensation for the services received compared to like services in other cities. This was an opportunity to review performance and talk to various departments about opportunities for improvement. Discussions were made with the Police Department in regards to the Firm's absence at bond hearings and sentencing and it was found that that time factor was an issue. The committee also reviewed the Firm's performance and found that there are opportunities for the Firm to make improvements.

Council discussion followed.

Councilperson Munn stated that he has worked with Fritz Wonderlich for 26 to 27 years, and he considers the proposed increase well deserved.

Councilperson Talkington stated that the Council has neglected the position and had not understood the full scope or complexity of the attorney's responsibilities.

Mayor Lanting stated that the City Attorney's contract should have been reviewed at the time of the employee salary survey. He stated he understands that the City Attorney has been underpaid for quite some time.

**MOTION:**

Vice Mayor Hall made the motion to approve the independent contract as listed in the staff report for Wakefield & Wonderlich for the City Attorney services as defined in Idaho Code Section 50-208(A), and to authorize the Mayor to sign the contract. The motion was seconded by Councilperson Munn.

City discussion followed.

Councilperson Mills Sojka stated her concern of a 43% increase to the City Attorney contract in the middle of the fiscal year. She stated if she had more data that compared the services that other cities are receiving to what the citizens of Twin Falls are receiving she could make a more confident decision. She is not sure of committing Councils five years in the future to a certain succession plan or an automatic 5% increase in the contract every year. She understands that the County prosecutors attend sentencing and bond hearings and believes it makes a difference whether criminals are put away.

Councilpersons Hawkins, Munn, Barigar, Talkington, Lanting, and Hall voted in favor of the motion. Councilperson Mills Sojka voted against the motion. Approved 6 to 1.

3. Consideration of a request to approve a resolution declaring a policy of transparency and openness in city government.

Vice Mayor Hall explained the request. He stated that it is appropriate to discuss transparency and openness in city government and to hold elected officials accountable to insure what is being done is legal and right and citizens have access to officials' decisions and decision making.

He highlighted portions of the proposed resolution:

- *The Twin Falls City Council finds that transparency in government promotes accountability and provides information to its citizens regarding the business of the City;*
- *The Twin Falls City Council finds that collaboration and communication between City government and its citizens is enhanced through the use of well-designed web technologies; and*
- *The Twin Falls City Council finds that the minimum requirements of the Idaho Open Meeting Law, the Idaho Public Records Law, and other statutes, are inadequate to provide the transparency and openness that it finds should be provided to its citizens in order to permit them to constructively engage with City government.*
- *In order to provide more transparency in City government, no Council member will serve with any other Council member on any committee or commission related to the City's business and with authority to make recommendations to the Council, unless that committee or commission is created by a vote of the City Council. All such committees and commissions shall always comply with all requirements of the Idaho Open Meeting Law, as well as the other provisions of this Resolution.*
- *The City will stream and video record all Council and commission meetings (excepting Council executive sessions, Airport Advisory Commission meetings, which meets at the Airport, and the Youth Council),*
- *The City will provide access to the annual budget, monthly financial reports, accounts payable, financial dashboard, the comprehensive Plan and Future Land Use Map, the Transportation Plan, the Water Plan, the Strategic Plan, the Twin Falls City Code, the Zoning Map, the Subdivision Map, the Pressure Irrigation Map, the Garbage Pickup and Recycling Map, the Flood Plain Map, and such other documents*
- *The Idaho statutes have no requirements for contact information for public officials.*
- *The City will post current bidding and job opportunities on the City's website.*
- *The City will provide, on its website at ([www.tfid.org](http://www.tfid.org)), the opportunity for citizens to subscribe to notifications, alerts, job openings, news, and meetings, so that the information is emailed or sent via text message directly to the subscriber on a regular basis.*
- *The City Council finds that the Idaho statutes relating to the conduct of the business of local government have fallen far behind the technology currently available to provide greater transparency and openness to the legislative and administrative process of local government.*

Councilperson Munn explained what is being proposed in the resolution and what was presented in the failed resolution presented to the Council on November 13, 2013.

Failed Resolution verbiage:

- *That henceforth, all committees, sub-committees, and work groups of the Twin Falls City Council or any of its commissions or committees, whether created by action of the city council or any of its commissions, or by appointment of the Mayor or chairman of any city commission or committee, shall publicly notice and post their meetings in advance, keep written minutes of the meetings, and open such meetings to the public, except as otherwise provided in the Idaho Open Meeting Law.*

Proposed verbiage:

- *In order to provide more transparency in City government, no Council member will serve with any other Council member on any committee or commission related to the City's business and with authority to make recommendations to the Council, unless that*

*committee or commission is created by a vote of the City Council. All such committees and commissions shall always comply with all requirements of the Idaho Open Meeting Law, as well as the other provisions of this Resolution.*

He stated that in the spirit of the failed resolution the verbiage in the proposed resolution addresses concerns regarding ad hoc volunteer groups.

- o *Section 3: The City Council acknowledges that, from time to time, ad hoc volunteer groups may form, without the authority of statute, ordinance, or other legislative act, and without authorization to make decisions or recommendations.*

Council discussion followed:

Councilperson Talkington stated that he would like to discuss the resolution but recommended that an action not be taken. He stated he would be in support of no ad hoc volunteer groups.

Councilperson Mills Sojka stated that Section 3 of the proposed resolution is close to the resolution that failed. Section 3 of the proposed resolution does not address committees that don't have power to make a recommendation. From time to time ad hoc committees will form. She would not be in favor of circumventing the Open Meeting Law by having the Mayor create a committee. She recommended that the wording be changed to say that the City Council acknowledges that committees must be formed by the full Council by act, resolution or legislative motion.

She stated that the following verbiage in the resolution is not relevant, "...no Council member will serve with any other Council member on any committee or commission related to the City's business and with authority to make recommendations to the Council..."

Vice Mayor Hall stated for the record and in response to Councilperson Tarkington's comments that he did say that he believes the Council is making a mountain out of molehill and still feels that way to a certain extent and takes exception to the comment "welcome aboard" that we are now looking at transparency. He stated that he does not believe that any member of the City Council is trying to hide anything or is being anything less than transparent.

Mayor Lanting stated that he can support Section 3 of the proposed resolution. He stated that he formed the majority of the committees in question to decide who to appoint to the Planning & Zoning Commission, Historic Preservation Commission and the URA Board. By Idaho Code Statute the Mayor is allowed to appoint commission members and the appointment is confirmed by the Council. He explained the appointment process he has used the past two years. He does not believe interviewing volunteers to a commission should be open to the public.

Councilperson Barigar stated he believes that the City Council meeting held on October 21, 2013, on Open Meeting Laws, was not as confrontational as stated in the media. It is important to stay on the larger issue, which is a collective commitment to transparency and openness. The proposed resolution shows that the Council desires to go beyond the Open Meeting Laws. He stated he is in favor of establishing a process and moving forward.

Council discussion followed:

- ZOAC, Citizens Committee on Infrastructure (Wastewater Bond), Wastewater Contract Review, City Manager Review, City Attorney Review, Canyon Jump Committee, Municipal Powers Outsource Grant, Council Finance Committee, Commission Appointments
- Extensive discussion followed on the definition of a committee
- Economic Development Committee

Councilperson Hawkins stated that she believes she was taken out of context when she spoke on needing to be trusted. She clarified that she has nothing to hide, her life is an open book, and she is known for her character and what she stands for. She has been elected to the Council to represent the community and make decisions and work on issues for the citizens.

NO ACTION TAKEN. The proposed resolution will be placed on the Council agenda on December 2, 2013.

Councilperson Hawkins recommended the Zoning Ordinance Amendment Committee (ZOAC) be placed on the agenda to consider creating the committee.

The Council recessed at 6:37 P.M.

The Council reconvened at 6:48 P.M.

#### 4. Discussion on the "Jump the Canyon" Request for Qualifications proposals.

Councilperson Talkington asked the Council to consider the following ideas:

- Should Twin Falls allow a jump using City property and if the answer is no, the process is not necessary unless to hear applicant appeals.
- If the Council chooses to allow the jump should the jump be limited to one or more than one jump?
- Request from the applicant a full action plan

-Creation of a licensing requirement.

Scott Record, Twin Falls, spoke in favor of Ed Beckley, and discussed the hiring of a consultant.

Leon Mills, County Commissioner, spoke in favor of Ed Beckley.

Tim Norris, Area of Impact, asked who determines which proposal is technically feasible.

Victoria Wakewood, County of Twin Falls, stated her concern on the annexation of property.

Mayor Lanting stated that the City annexes City owned property only.

Mr. Morley, Jerome County Commissioner, stated that after reviewing the County's ordinances it was found that Jerome will have a significant expense in the jump. He requested the City Council meet with the Jerome County Commissioners.

Councilperson Barigar stated that the lease signed by Beckley has a clause stating that within 60 days of execution of the lease the successful lessee is to have permission from all governmental agencies with approvals, specifically the City of Twin Falls and Jerome County. He asked Mr. Morley if he has been contacted prior to last week's meeting. Mr. Morley stated that he does not believe so.

**MOTION:**

Councilperson Talkington made a motion that Twin Falls City allows a Snake River jump concept(s) using City property in the year 2014. The motion was seconded by Councilperson Barigar and roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

Council discussion followed.

Councilperson Barigar stated that he sees the Council role as (1) discussion of some negotiated agreement to use City owned property or some activity, and (2) permitting that activity and perhaps other peripheral ones but not conducting the event. He stated discussion be made on permitting an event to protect public health and safe, set criteria for a positive marketing image, and to assure this is a safe and sane event concept.

Council discussion followed.

-Department of Land process

-Memorandum from Beckley Media regarding possible litigation

**MOTION:**

Councilperson Mills Sojka made a motion to move forward and ask those questions laid out by Councilperson Barigar of Beckley Media, and move forward to planning the jump with the successful applicant who has landing rights on the other side. The motion failed due to a lack of a second.

Councilperson Munn asked what process was used by the City of Twin Falls when persons inquired on jumping the canyon.

Councilperson Barigar explained that 30 to 40 agencies met to discuss the canyon jump approximately 8 to 9 years ago. The overall consensus of the agencies was to direct those interested in jumping the canyon to the Department of Lands, because they had a process in place and not that an approval by the Department of Lands is a prerequisite for approval.

City Manager Rothweiler explained that the Department of Lands chose to go through a bidding process for the lease.

Councilperson Barigar stated approximately 3 to 4 years ago, a previous rendition of the current REO Group went to the State, submitted an application, negotiated a lease, secured the lease, and held the lease rights for two years, and the lease expired. This was the precedent agencies used. Agencies were unaware of a change in State Code based upon a Supreme Court Ruling from couple of years ago. The REO group submitted an application to the state, the State then advertised the availability of the land for the same use to other interested parties for a period of time (2 to 3 weeks), during which the State received four applications. The State solicited information from the applicants, received their proposals, drafted a non-negotiable lease, requiring a \$25,000 cash, and then had a live auction. Ed Beckley was the highest bidder at \$943,000. The \$943,000 secured the right to sign the lease. The \$943,000 is not part of the lease itself but is referred to as a bonus bid. The lease started on November 1, 2013.

City Manager Rothweiler stated he met with Ryan Lay, State Board of Lands, and with other individuals on how to construct a process that is mutually beneficial to all the parties. The purpose of the Endowment Lands is to earn money for the School Trust. The State gave the City the opportunity to review the lease. The City Attorney Wonderlich was able to insert the language that the lessee would need to work with and secure the approvals of Jerome City and Jerome County and any other entities

**MOTION:**

Councilperson Talkington made the motion to allow more than one applicant for the proposed Snake River Jump using City property in 2014. The motion was seconded by Councilperson Mills Sojka. Councilperson Talkington voted in favor of the motion. Councilpersons Barigar, Hall, Hawkins, Lanting, Munn and Mills Sojka voted against the motion. Failed 1 to 6.

**MOTION:**

Vice Mayor Hall made the motion to begin deliberations and decide a ranking structure of the five applicants. The motion was seconded by Councilperson Hawkins and roll call vote showed Councilperson Hall, Hawkins, Lanting, and Mills Sojka voted in favor of the motion. Councilperson Barigar, Munn, and Talkington voted against the motion. Approved 4 to 3.

**MAIN MOTION:**

Councilperson Talkington made the motion to negotiate the ranking starting with Beckley Media, REO Development, Adrenaline Nation, and Ping Pong. The motion was seconded by Councilperson Mills Sojka.

**AMENDMENT TO THE MOTION:**

Councilperson Hawkins made an amendment to the main motion to begin negotiations with Beckley Media and make separate motions to vote on the ranking of Reo Development, Adrenaline Nation, and Ping Pong. The motion was seconded by Councilperson Munn. Roll call vote showed Councilpersons Hall, Hawkins, Lanting, Munn voted in favor of the motion. Councilpersons Barigar, Mills Sojka, and Talkington voted against the motion. Approved 4 to 3.

**AMENDMENT TO THE MAIN MOTION AS AMENDED:**

Councilperson Barigar made the motion to complete negotiations with Beckley Media by January 31, 2014 and for this to be brought to Council for consideration no later than February 3, 2013, and if an agreement has not been reached within the time frame to negotiate with the next applicant. The motion was seconded by Councilperson Munn. Roll call vote on the amendment to the motion showed Councilpersons Barigar, Hall, Hawkins, Lanting, Munn and Talkington voted in favor of the motion. Councilpersons Mills Sojka voted against the motion. Approved 6 to 1.

**ROLL CALL VOTE ON THE MAIN MOTION AS AMENDED:**

To begin negotiations with Beckley Media and to make separate motions to rank REO Development, Adrenaline Nation, and Ping Pong and to complete negotiations with Beckley Media by January 31, 2014, and to be brought to Council for consideration no later than February 3, 2013. If an agreement has not been reached with Beckley Media to negotiate with the next applicant. Roll call vote showed Councilpersons Hall, Hawkins, Lanting, Munn, Mills Sojka and Talkington voted in favor of the motion. Councilperson Barigar voted against the motion. Approved 6 to 1.

**MOTION:**

Vice Mayor Hall made the motion that REO Development be ranked number 2. The motion was seconded by Councilperson Mills Sojka and roll call vote showed all members present voted in favor of the motion. Approved 7 to 0.

**MOTION:**

Councilperson Talkington made the motion that the applicant criteria would require a \$1,000,000 surety bond. The motion was seconded by Councilperson Barigar. Roll call vote showed Councilperson Talkington voted in favor of the motion. Councilpersons Barigar, Hall, Hawkins, Lanting, Munn and Mills Sojka voted against the motion. Failed 6 to 1.

**MOTION:**

Councilperson Hawkins made the motion that Ping Pong be ranked number 3. The motion was seconded by Vice Mayor Hall. Roll call vote showed Councilpersons Hall, Hawkins Lanting, Munn, and Talkington voted in favor of the motion. Councilpersons Barigar and Mills Sojka voted against the motion. Approved 5 to 2.

**MOTION:**

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Councilperson Talkington made the motion that Adrenaline Nation be ranked number 4. The motion was seconded by Vice Mayor Hall and roll call vote showed Councilpersons Hall, Hawkins, Lanting, Munn, Mills Sojka, and Talkington voted in favor of the motion. Councilperson Barigar voted against the motion. Approved 6 to 1.

5. Public input and/or items from the City Manager and City Council.

Festival of Lights to be held on December 6, 2014, at 6:00 P.M.

**III. ADVISORY BOARD REPORTS/ANNOUNCEMENTS:**

**IV. PUBLIC HEARINGS:** None

**V. ADJOURNMENT:** The meeting adjourned at 8:55 P.M.



**Date:** Monday, December 23, 2013  
**To:** Honorable Mayor and City Council  
**From:** Troy Vitek, Assistant City Engineer

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**Request:**

Consideration of a request to accept the Roadway Construction and Maintenance Agreement for Fillmore Street between Canyon Springs Road and Blue Lakes Blvd with Canyon Park Development LLC.

**Time Estimate:**

The staff presentation will take approximately 5 minutes.

**Background:**

The developer is reconstructing Fillmore Street as a private roadway. The City, at the request of the Developer, has dedicated the Access Parcel identified as Exhibit A and shown as Schedule 1 Legal Description. The Access Parcel is contiguous with and an integral part of Fillmore Street. Developer has agreed to construct Fillmore Street and thereafter maintain Fillmore Street and the Access parcel as set forth in the attached Agreement.

The developer has worked with City Staff and the City attorney to prepare the attached agreement and both are satisfied.

The agreement states that the Developer shall construct and maintain the roadway. The City has the right to perform law enforcement activities and perform such work as is necessary to cure any default by the Developer under this agreement. The developer will then reimburse the City for all direct costs incurred by the City to cure the default.

**Approval Process:**

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

**Budget Impact:**

Acceptance of the agreement does not impact the City budget.

**Conclusion:**

Staff recommends the Council approve the request and allow the Mayor to sign the Agreement.

**Attachments:**

1. Grant of Easement

Recording Requested By and  
When Recorded Return to:

HAWLEY TROXELL ENNIS & HAWLEY LLP  
Attn: Timothy W. Tyree  
P.O. Box 1617  
Boise, Idaho 83701

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SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

## ROADWAY CONSTRUCTION AND MAINTENANCE AGREEMENT

THIS ROADWAY CONSTRUCTION AND MAINTENANCE AGREEMENT (“**Agreement**”) is entered into on \_\_\_\_\_, 2013, between the City of Twin Falls, a municipal corporation (“**City**”), and Canyon Park Development, LLC, an Idaho limited liability company (“**Developer**”).

### 1. Preliminary

**1.1 Purpose.** Developer is constructing Fillmore Street (as defined in Section 1.2(c)) as a private roadway. The City, at the request of Developer, has dedicated the Access Parcel (as defined in Section 1(d)) as a public right-of-way. The Access Parcel is contiguous with and an integral part of Fillmore Street. Developer has agreed to construct Fillmore Street and thereafter maintain Fillmore Street and the Access Parcel as set forth in this Agreement.

**1.2 Definitions.** The following terms shall have the definitions ascribed to them below.

**(a) “Developer”:** Canyon Park Development, LLC, an Idaho limited liability company, together with any entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof. Developer’s current address is P.O. Box 5478, Twin Falls, Idaho 83303-5478.

**(b) “City”:** The City of Twin Falls, a municipal corporation, whose current address is 321 2nd Ave. East, Twin Falls, ID 83301.

**(c) “Fillmore Street”:** Tract A of the Canyon Park Amended Subdivision, according to the official plat thereof recorded as Instrument No. \_\_\_\_\_ on \_\_\_\_\_, 2013, Book \_\_\_, Page(s) \_\_\_\_\_ in the official records of Twin Falls, County, Idaho as shown on Exhibit “A.”

**(d) “Access Parcel”:** That certain real property described on Schedule I attached hereto and made a part hereof and as depicted on Exhibit “A.”

(e) **“Person”**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

## **2. Fillmore Street**

**2.1 Development.** Developer shall construct Fillmore Street, including road base, asphalt paving, curbs, gutters, sidewalks, storm drain features, illumination and traffic control signage all in accordance with plans approved by the City. Prior to the construction of any such improvements, Developer shall obtain the City’s approval in accordance with the procedures set forth in Section 2.3.

**2.2 Construction Requirements.** All work performed in the construction, maintenance, repair, replacement, or alteration of Fillmore Street and/or the Access Parcel shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the properties contiguous to Fillmore Street and/or the Access Parcel, (ii) customer vehicular parking in front of any building accessed by Fillmore Street and/or the Access Parcel, or (iii) the receiving of merchandise by any business accessed by Fillmore Street and/or the Access Parcel, including, without limitation, access to such business.

**2.3 Approval Procedures.** Before any action requiring the City’s approval is commenced, sufficient information shall be sent to the City to enable the City to make a reasonable decision as to the proposal. The City shall not unreasonably withhold its consent.

## **3. Easements.**

(a) Developer, as grantor, hereby grants to the City an easement to enter upon Fillmore Street to perform such work on Fillmore Street as is necessary to cure any default by Developer under this Agreement, including, without limitation, exercising City’s self-help remedies under Section 6.5.

(b) Developer, as grantor, hereby grants to the City and the City Police Department an easement to enter upon Fillmore Street to patrol Fillmore Street and perform law enforcement activities.

## **4. Maintenance and Operation Obligations**

**4.1 Maintenance.** Upon completion of Fillmore Street as set forth in Section 2.1, Developer will maintain Fillmore Street and the Access Parcel at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing, resurfacing, and re-striping, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;

(b) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition; and

(c) Maintaining, repairing and replacing, when necessary, all traffic control signs, markers and lines.

(d) Maintaining, repairing and replacing, when necessary, all light poles, ballasts and fixtures.

**4.2 Traffic Control.** The City will monitor all traffic control and directional signage within Fillmore Street and/or the Access Parcel. The City and Developer will work together and coordinate any changes to the traffic control and directional signage.

**4.3 Maintenance of Connecting Roads.** To the extent controlled by the City, the City will maintain the roads connecting to Fillmore Street and/or the Access Parcel according to the standards set forth in Section 4.1.

## **5. Casualty And Condemnation**

**5.1 Casualty.** If all or any portion of Fillmore Street and/or the Access Parcel is damaged or destroyed by fire or other casualty, the owner of such property shall promptly restore or cause to be restored the improvements on such property, including road base, asphalt paving, curbs, gutters, sidewalks, storm drain features, illumination and traffic control signage.

### **5.2 Condemnation.**

(a) **Restoration.** If all or any portion of Fillmore Street and/or the Access Parcel is taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof (“**Condemnation**”), the owner of such property shall restore or cause to be restored the remaining portion of the Condemned Parcel as near as practicable to the condition immediately prior to such Condemnation.

(b) **Allocation of Award.** If all or any portion of Fillmore Street and/or the Access Parcel is taken or damaged as a result of a Condemnation (“**Condemned Parcel**”), the owner of the Condemned Parcel shall be entitled to the entire award or purchase price paid for the Condemned Parcel; provided, however, that nothing contained herein shall affect any other person’s right to seek severance damages.

## **6. General Provisions**

### **6.1 Successors and Assigns.**

(a) **Persons Bound.** This Agreement shall inure to the benefit of and be binding upon the City and Developer, their heirs, successors, assigns and personal representatives, and upon any person acquiring Fillmore Street and/or the Access Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any owner sells or transfers all or any portion of its interest in any property, such owner shall, upon the sale and conveyance of title, be released and discharged from all of its obligations as owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new owner of any such

property or any portion thereof shall be liable for all obligations arising under this Agreement with respect to such property or portion thereof after the date of sale and conveyance of title.

**6.2 Modification and Termination.** This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of Developer and the City, and then only by written instrument duly executed and acknowledged by them and recorded in the office of the recorder of Twin Falls County, Idaho.

**6.3 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of Fillmore Street to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

**6.4 Default.** A person shall be deemed to be in default of this Agreement only upon (i) the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any party specifying the particulars in which such person has failed to perform the obligations of this Agreement, and (ii) failure by such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), to rectify the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

**6.5 Remedies.** In the event the Developer fails to perform any of the provisions of this Agreement, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from the City specifying the particulars of such failure, such failure shall constitute a default and the City may thereafter institute legal action against the Developer for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law and/or may perform the obligations of the Developer specified in said notice of default and Developer will reimburse the City for all direct costs incurred by the City to cure the default; provided, however, that the Developer shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Developer is diligently proceeding to rectify the particulars of such failure.

**6.6 Notices.**

(a) **Delivery.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of Twin Falls County, Idaho. All notices to City or Developer shall be sent to the appropriate party at the address set forth below:

City: City of Twin Falls  
321 2nd Ave. East  
Twin Falls, ID 83301

Developer: Canyon Park Development, LLC  
P.O. Box 5478  
Twin Falls, Idaho 83303-5478

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

**(b) Receipt.** For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: *(i)* the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, *(ii)* the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or *(iii)* in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

**6.7 Attorneys’ Fees.** In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys’ fees (including, without limitation, its reasonable costs and attorneys’ fees on any appeal). All such costs and attorneys’ fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

**6.8 Severability.** If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**6.9 Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

**6.10 No Third Party Beneficiary Rights.** This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

**6.11 Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

**DEVELOPER:**

Canyon Park Development, LLC,  
an Idaho limited liability company

By: Ray H. Neilsen by Tina Luper, agent  
Ray H. Neilsen, Manager  
by Tina Luper as agent

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

On this 18<sup>th</sup> day of December, 2013, before me, Margo Williams, a Notary Public in and for said State, personally appeared Tina Luper, known or identified to me to be the attorney-in-fact for Ray H. Neilsen, the manager or a member of Canyon Park Development, LLC, or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that Tina Luper subscribed the name of Ray H. Neilsen as the manager and her own name as attorney-in-fact and that such limited liability company 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.



Margo Williams  
Notary Public for Idaho  
Residing at Twin Falls  
My commission expires 9-1-2018



**SCHEDULE I LEGAL DESCRIPTION**

A parcel of land located in Government Lot 3, Section 34, Township 9 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho; being more particularly described as follows:

Commencing at the most Easterly corner of "Canyon Park West No.1 Subdivision", being a point 58.00 feet left of Station 127+50 of Highway Project F-RF-2391 (23);

Thence North 56°25'45" West, 93.96 feet along said subdivision boundary to a point 152.00 feet left of Station 127+50 of said Highway project;

Thence North 26°33'05" East, 56.64 feet along said subdivision boundary;

Thence North 58°01'28" West, 26.50 feet along said subdivision boundary;

Thence along a curve left on said subdivision boundary;

Δ - 20°58'03"

R - 432.00'

A - 158.09'

C - 157.21'

LCB - North 68°30'29" West to the REAL POINT OF BEGINNING;

Thence along a curve left on said subdivision boundary.

Δ - 07°58'09"

R - 432.00'

A - 60.09'

C - 60.04'

LCB - North 82°58'35" West

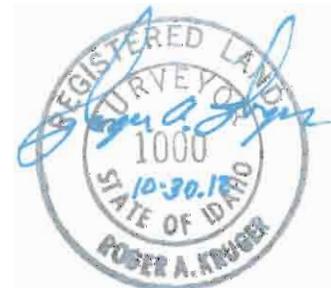
Thence North 09°03'07" East, 276.99 feet along the Easterly boundary of Lot 4, Block 1, "Canyon Park North Subdivision".

Thence North 09°12'19" East, 46.21 feet along the Easterly boundary of said Lot 4.

Thence South 80°44'31" East, 59.88 feet to a point on the Westerly boundary of Lot 5, Block 1, "Canyon Park North Subdivision".

Thence South 09°03'07" West, 320.86 feet along the Westerly boundary of Lots 5 & 6, Block 1, "Canyon Park North Subdivision" to the REAL POINT OF BEGINNING.

Containing approximately 19276 Sq. Ft.





**MONDAY**      December 23, 2013

**To:**              Honorable Mayor and City Council

**From:**          Mitchel Humble, Community Development Director

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**Request:**

Consider and act on request from Doris Ryall to purchase a portion of a City owned lot located at 2617 Paintbrush Drive.

**Time Estimate:**

While this item is not a public hearing, it may be appropriate for the applicant to briefly describe her request. A staff presentation will take approximately 5 minutes. Time will be needed for discussion and questions.

**Background:**

In 1997, the Wilstar, 1<sup>st</sup> Amended, Subdivision plat was recorded, creating the eight lots on the north side of Paintbrush Drive between Carriage Lane and Trotter Drive. The two lots and the ends of this block (Lots 1 and 8) were both constructed and reserved for storm water retention purposes. At that time, these two retention lots were owned by the homeowners association.

In 1998, a home was built on Lot 2 of the block, adjacent to the western retention lot. With the construction of that home, a concrete pad and fence were also constructed. The fence and pad were located approximately 7 feet over the property line, on Lot 1. In 2000, the home was sold to Doris Ryall. In 2003, the City acquired Lots 1 and 8. The City has owned and maintained these two retention ponds since that time.

Ms. Ryall recently put her home up for sale. In that sale process, she learned that her fence and concrete pad actually encroached onto the City's retention lot, Lot 1. Ms. Ryall's realtor contacted City staff and inquired about the various options regarding how to deal with the encroachment. In that conversation, the realtor asked if Ms. Ryall could purchase the eastern most 7 feet of the City's property so that the fence and pad would then be located on her lot. He was told that she could certainly make that request, but the request would have to go to the City Council for a decision. We then also discussed the acquisition process and pros and cons of the City selling the property.

First, cities in Idaho have a fairly specific process to take when selling public property. The first step in that process is for the City Council to adopt a resolution declaring the property to be excess to the City's needs and that they intend to dispose of the excess property. That resolution will also set a public hearing date for the Council to hear arguments for or against disposal of the property. The Council may also determine at this point whether or not to establish a minimum value for the property.

Following the de3claration and subsequent required notice time, the Council then holds a public hearing. The purpose of this hearing is to hear input on the property's disposal. After the hearing, the Council can then direct staff to take steps to dispose of the property. In the case where a property is proposed to be sold to a private entity, that disposal method is via public auction. An auction notice will be published indicating the property is for sale and providing instructions on when bids are due, where they must be submitted, and when bids will be opened and reviewed.

Upon closing of the auction period, staff will open and read the bids received in a public meeting and declare the apparent high bidder. That bid then will be submitted for award by the City Council at an upcoming Council meeting. If no bids are received, then the Council can direct that the City sell the property via another, non-auction process.

That generally describes the process a City must go through to sell property. This specific request has some circumstances that will impact the sale process. The request is to purchase a portion of the City's lot, approximately 7 feet for the depth of the lot, or 770 square feet. Therefore, a split of our property needs to occur in order for the City to dispose of it. If the adjacent property owner is the high bidder, then the split can be accomplished with a lot line adjustment. That is a fairly simple process of having a record of survey prepared for the two new lot alignments then record deeds with the revised legal descriptions. However, if anyone else is the high bidder, then a plat would have to be prepared and approved by the City before the property could be sold. A plat process could be costly and lengthy by comparison. If the City decides to go through the auction process, we should provide clear direction regarding the responsibility to prepare whatever split documents are necessary.

In addition to the process discussion above, other factors should be considered. The intended purpose of the City's lot is for storm water retention. The fence and concrete pad are not located in the recessed retention pond on this lot and do not interfere with the lot's retention function. However, that may not always be the case. Soon, the City will reach a population of 50,000. Crossing that threshold will bring many new requirements for the City to meet. One of those new requirements will be additional storm water retention capacity. We haven't yet completed a plan for how to best provide the additional retention capacity, but one viable option will be to expand the capacity of our current retention facilities. In that event, this retention pond may need to be expanded and the area around the top that is not currently within the pond may need to be incorporated into the pond. The City will then need the fence and concrete pad to be removed to accommodate the expanded retention need.

The City owns several properties, probably many more than we know, where adjacent private property improvements have encroached onto the City's property. The retention lot at the other end of this block is another one where the adjacent property's fence encroaches onto City property. Staff is concerned about the message being sent if the City agrees to sell property to the adjacent homeowner as a solution to the encroachment. As in this situation, selling the property may not be the best solution given the specific circumstances.

Due to the future need for expanded retention capacity and the precedent that may be set by approving this request, staff is not supportive of the request. However, there has not been, and still is not, an immediate need to reclaim the property where the applicant's fence and concrete pad are located. Staff does support allowing the fence and concrete pad to remain in place, until such time as the retention pond is expanded.

**Process:**

A simple majority vote of the Council is needed to approve this request. If the Council approves this request, staff will prepare a declaration resolution as described above for consideration at an upcoming Council meeting.

**Budget Impact:**

There is no budget impact associated with this request. However, if the Council approves the request, there will be incoming revenue from the sale of the property upon completion of that process.

**Regulatory Impact:**

If the Council approves this request, staff will begin the process to dispose of public property as outlined in the report above.

**Conclusion:**

Staff recommends that the Council review the request and provide direction to the applicant and staff on how to proceed.

**Attachments:**

1. Property Location Map
2. Request Letter from Adjacent Property Owner
3. Plat of Wilstar Subdivision, 1<sup>st</sup> Amended
4. Aerial Photo of Property



Doris Ryall

2633 Paintbrush Drive

Twin Falls, ID 83301

Twin Falls City Council

P.O. Box 1907

Twin Falls, ID 83303

Dear Council Members,

I am writing to inform you of a situation that I have encountered while trying to sell my home. I live at 2633 Paintbrush Dr. (Twin Falls Wilstar Subdivision 1<sup>st</sup> Amd., Lot 2 Block 1) and it has come to my attention that on the west side of my property line, the concrete and fence are almost 7 feet on to a lot owned by the city.

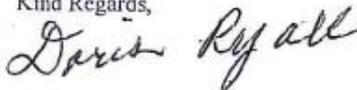
A little history. I bought this house from James Ray on February 24<sup>th</sup>, 2000. The concrete and fence were there when I bought it. James Ray lived in the home from 1998-2000. So from around 1998 till now, the concrete and fence have been 7 feet on to the other lot. At the time James Ray built the home, the empty lot was owned by the developers. On December 29<sup>th</sup>, 2003 the lot was decided over to the city as a water retention lot / common area. So it has been sitting like this for about 15 years with about 10 years of that time being on a city owned lot.

I would like to ask the city to put that 7 ft x 110 ft piece of land up for auction (part of Twin falls Wilstar Subdivision 1<sup>st</sup> Amd. Lot 1 Block 1). It looks to be surplus land, there is more than enough land left over for a water retention area to handle the needs of the subdivision, as it has been in this state since the city took control of the land and there have been no issues.

Nobody has caught this for 15 years. James Ray, the city or myself. Please help me get this issue resolved so I can finalize the sale of my property.

Thank you for your prompt attention.

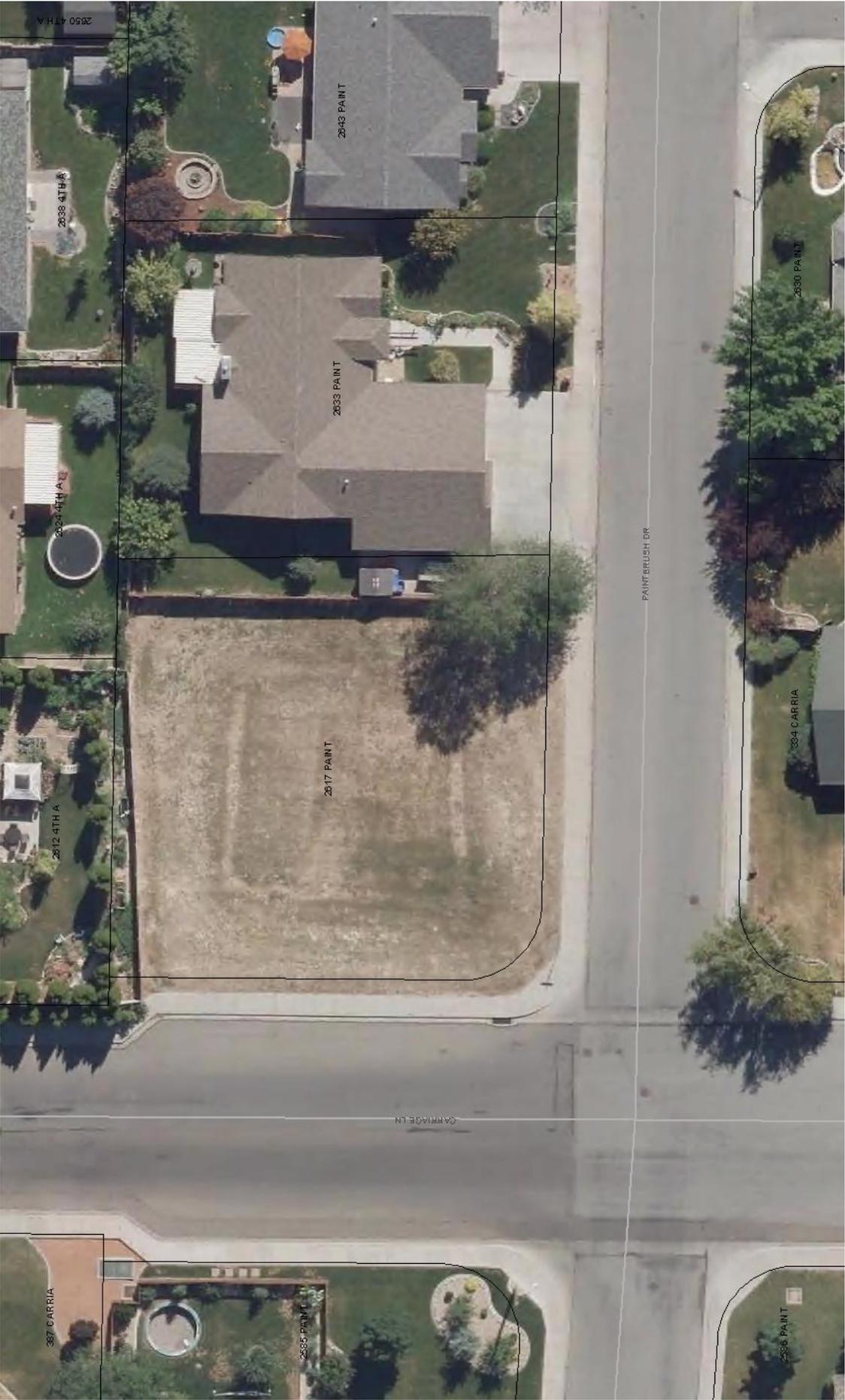
Kind Regards,



Doris Ryall

208-733-1570







**Date:** Monday, December 23, 2013  
**To:** Honorable Mayor and City Council  
**From:** Mitchel Humble, Community Development Director

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#### **Request:**

Consideration of a request to initiate a Special Use Permit Application for a new tourist information center to be located on property the City leases from the Idaho Transportation Department and operated by the Chamber of Commerce.

#### **Time Estimate:**

The presentation will be given by Shawn Barigar, Chamber President and CEO. His presentation will take approximately 10 minutes. We expect additional time will be needed to discuss and answer questions.

#### **Background:**

The City has leased about 3 acres of land located at the southwest corner of Blue Lakes Boulevard North and the Snake River Canyon Rim from the Idaho Transportation Department (ITD) for several years. The purpose of this lease is so the City can provide a trail head park and a tourist information center. The City has worked cooperatively with the Twin Falls Area Chamber of Commerce to operate the tourist information center. Currently, the Chamber seasonally operates the information center in a building that is about 1,000 square feet. The City also has a restroom facility in a separate building on the site.

The Chamber has been working for several years to find a way to replace the current information center with an expanded and updated center that will allow the center to be operated year-round with indoor restroom facilities and full time staff. The Chamber is finally now able to move forward with their plan and begin the process to construct the new, expanded, and updated tourist information center.

The property is zoned "OS - Open Space." In the OS district, a tourist information center is a permitted use upon approval of a Special Use Permit (SUP). The current information center is proposed to be expanded by more than 25%, causing the need for a new SUP to be approved prior to the City issuing a building permit. City Code states that only a property owner or lessee can submit an application for a SUP on a property. Since the property is owned by ITD and leased by the City, the Chamber is neither the owner nor the lessee. Either ITD or the City needs to be the applicant in order to proceed with a SUP application.

City staff has been meeting with representatives from the Chamber and ITD to discuss how to proceed with the tourist center expansion. We all agreed that it may be best for the City to stop being a middle man in this arrangement, and that the Chamber should lease the property directly from ITD. ITD has tentatively agreed to lease the property to the Chamber and has provided a draft lease agreement for the Chamber Board to review. Both parties are optimistic that they will be able to successfully complete these negotiations. However, we all agree that the Chamber should have the assurance of knowing they'll have the ability to expand the tourist center before entering into the lease for the property. ITD has indicated their preference would be for the City to be the SUP applicant. If the City agrees to cooperatively apply for the SUP with the Chamber, and the SUP is subsequently approved, it will stay with the property if and when the City terminates the lease with ITD and the Chamber enters into a new lease.

The Chamber has submitted a letter requesting that the City agree to submit the SUP application. The Chamber will take care of the application details, like providing the necessary site plan and accompanying documents, mailing notification letters to adjacent property owners, presenting the application to the Planning & Zoning Commission, etc... The second part of the Chamber's request is that upon successful completion of the SUP process, they would like the City to terminate our lease of the subject property with ITD so they can enter into their own lease. Staff has reviewed the request and supports this change to the land lease. However, the City did lease the property for a purpose other than the visitor center, that being the canyon rim trail, overlook, and trail head park. Before the City terminates the lease, we should enter into an agreement with the Chamber regarding the continued maintenance and

public use of the trail and trail head facilities. Those facilities are important to the City and the Chamber and we are optimistic that we'll be able to finalize such an agreement without concern.

**Approval Process:**

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

**Budget Impact:**

There is no significant budget impact associated with this request. The Chamber of Commerce will pay for the application fee and notification expenses.

**Regulatory Impact:**

Approval of this request will authorize the City to submit an application for a Special Use Permit as described above. Following approval, City staff will begin working with the Chamber to draft an agreement regarding the continued maintenance and public use of the trail and trail head facilities.

**Conclusion:**

Staff recommends that the Council approve the request from the Chamber of Commerce and authorize the Special Use Permit application for a new tourist information center.

**Attachments:**

1. Chamber of Commerce Request Letter
2. Location Map
3. Copy of the City's lease of the ITD property

2-537

Victor's Court

REAL PROPERTY LEASE AGREEMENT

THIS AGREEMENT, made this 11th day of May, 2001 by and between the STATE OF IDAHO, IDAHO TRANSPORTATION DEPARTMENT, acting by and through the IDAHO TRANSPORTATION BOARD, hereinafter called the "Lessor" and CITY OF TWIN FALLS, hereinafter called the "Lessee(s)",

WITNESSETH:

That the Lessor for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the Lessee(s), has by these presents demised and leased to the Lessee(s) the following described premises in Twin Falls County, Idaho, to-wit:

Two (2) acres, more or less, located south and west of the south end of the Perrine Bridge. Also described as being in Lots 3 and 4, Section 34, Township 9 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho.

The property is more specifically shown on plat map attached hereto and made a part hereof.

Use of the leased land is for the following purpose:

Landscaping, signage, and other improvements to allow Lessee to maintain in conjunction with city development of public access. Plans for any and all improvements shall be submitted to ITD for approval prior to any work being commenced. Any signage shall comply with the ITD Standards for roadside improvements and with the sign requirements of the City of Twin Falls. It is specifically understood that "billboard" type signs will be strictly prohibited. All signs shall be located a minimum of 20 feet behind the curb.

TO HAVE AND TO HOLD the said premises to the Lessee(s) from the 1<sup>st</sup> day of May, 2001 to and including the 30<sup>th</sup> day of May, 2026 unless said lease be sooner terminated as is hereinafter provided.

This Agreement is entered into for a period of (not more than) 25 years or until such time as I.T.D. requests use of the property for improvements to the transportation facility.

LESSEE(S), in consideration of the leasing of the premises above described and set forth, covenants and agree(s) with the Lessor to pay as rent for the same, the sum of \$30,000 DOLLARS . This sum is payable in equal installments of \$1200 per year. First installment due concurrently with the execution of this lease and subsequent installments due on or before the 1st day of May each successive year.



December 17, 2013

Dear Twin Falls City Council,

The Twin Falls Area Chamber of Commerce is currently reviewing an opportunity to consider moving forward with constructing an expanded tourist information center to replace the existing visitor center near the south rim of the Snake River Canyon west of the Perrine Bridge. In reviewing the concept with City staff, it has come to our attention that a Special Use Permit would be required for this use. Additionally, the Special Use Permit may only be applied for by the property owner or lessee. The property in question is owned by the State of Idaho (Idaho Transportation Department) and is leased by the City of Twin Falls.

The Idaho Transportation Department is willing to directly lease the property to the Chamber of Commerce instead of to the City of Twin Falls. The City Manager and City Attorney have reviewed this option and support the change in the lease. A draft lease has been presented to the Chamber by the Idaho Transportation Department for our Board's consideration. Assuming the terms can be successfully negotiated, the Chamber will be willing to execute this lease if it can gain approval for the Special Use Permit for the new facility. The application for the Special Use Permit to the Planning and Zoning Commission needs to occur prior to the execution of this lease and, therefore, can only be applied for by the Idaho Transportation Department or the City of Twin Falls.

The Chamber requests that the City Council consider:

1. Initiating the application for the Special Use Permit on behalf of the Chamber of Commerce for a tourist information center
2. Agreeing to cancel the City's lease of the property with the Idaho Transportation Department and to support the Chamber becoming the lessee of this property.

If the City Council agrees to these items, the Chamber will work with City staff to prepare the application for the Special Use Permit and present it for consideration to the Planning and Zoning Commission, once the Chamber Board reaches a final decision of whether to move forward with the project.

Sincerely,

A handwritten signature in black ink that reads "Shawn Barigar".

Shawn Barigar  
President / CEO



**Chamber of Commerce Visitor Center Location**

LESSEE(S) agree(s) that the said-demised premises are in good order and condition, and will, at their own cost and expense, maintain and keep said premises in as good condition as they were at the time possession thereof was taken by Lessee(s), and at the expiration of the term of this lease will yield up possession of the said premises to Lessor without further demand or notice and in as good order and condition as when the same were entered upon by the Lessee(s), loss by fire or inevitable accident and ordinary wear excepted.

LESSEE(S) shall not allow or suffer any waste on said premises, nor use or occupy, or permit any other person to use or occupy said premises, or any part thereof, for any unlawful purpose whatever, and the use of said premises for any unlawful purpose, shall, at the option of the Lessor, immediately terminate this lease.

LESSEE(S) shall not assign this lease, or underlet said premises or any part thereof, without the written consent of the Lessor.

LESSEE(S) shall pay as the same become due, all charges for water, light, and electrical power used on said premises during the term of this lease, and the Lessee(s) shall likewise pay as the same become due, all taxes and assessments on all personal property owned by the Lessee(s) and by kept on said premises.

LESSEE(S) shall promptly dispose of all garbage, refuse or debris that may accumulate in consequence of occupation of said premises, shall keep any lawns and grounds in a clean, neat, and presentable condition, and shall fully comply with all laws, ordinances, and regulations now in force, or that may hereafter be enacted, covering and regarding the occupancy and/or business conducted on said premises by Lessee(s).

LESSEE(S) shall indemnify and save harmless Lessor from all liability, however arising, as to any and all persons whomsoever, whether for personal injuries or otherwise, and from damage or injury resulting to any persons whomsoever from defects or defective conditions of said leased premises, and save harmless Lessor from any claim of any person for injuries to person or property by reason of anything done or permitted to be done, or suffered or permitted to be done by the Lessee(s) or employees and/or agents in and about the occupation, operation, and maintenance of said leased premises.

Any failure or default on the part of Lessee(s) to pay the rent when due or to comply with any and all of the terms, covenants, or conditions of this lease within thirty (30) days after written notice from Lessor to Lessee concerning such default, shall, at the option of Lessor, terminate this lease, and the said Lessee(s) shall forthwith, after five (5) days written notice of said failure or default, quit and surrender said premises to the Lessor.

LESSOR shall have, and is hereby granted, the right to inspect said demised premises at all reasonable times, and to go upon said premises for the purpose of repairing and protecting the same or any part thereof.

IT IS UNDERSTOOD AND AGREED that should Lessor grant written permission to Lessee(s) to make alterations in said demised premises that then and in that event, Lessee(s) agree(s) to remove any such alterations prior to the expiration of the term of said lease and the said Lessee(s) agree(s) to restore the said premises to the condition they were at the time said Lessee(s) took possession under said lease.

IT IS FURTHER UNDERSTOOD AND AGREED that either party may terminate this lease at any time after 6 months notice in writing given to the other party.

THE FOLLOWING SPECIAL CONDITIONS ARE MADE A PART OF THIS LEASE;

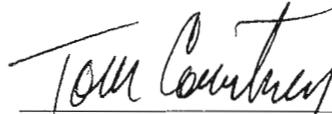
All improvements shall meet ITD Standards for roadside improvements (ie: meet safety and visual requirements)

LESSEE(S) will ensure that sprinkling systems will have adequate drainage and will not interfere with roadway traffic.

LESSEE(S) shall provide a pedestrian/bike access and will not allow improvements along this path or sidewalk (ie: tree growth) to compromise the safety of roadway, pedestrian or bike traffic.

IN WITNESS WHEREOF, the Idaho Transportation Department and the Lessee have executed this Agreement as of the day and year first above written.

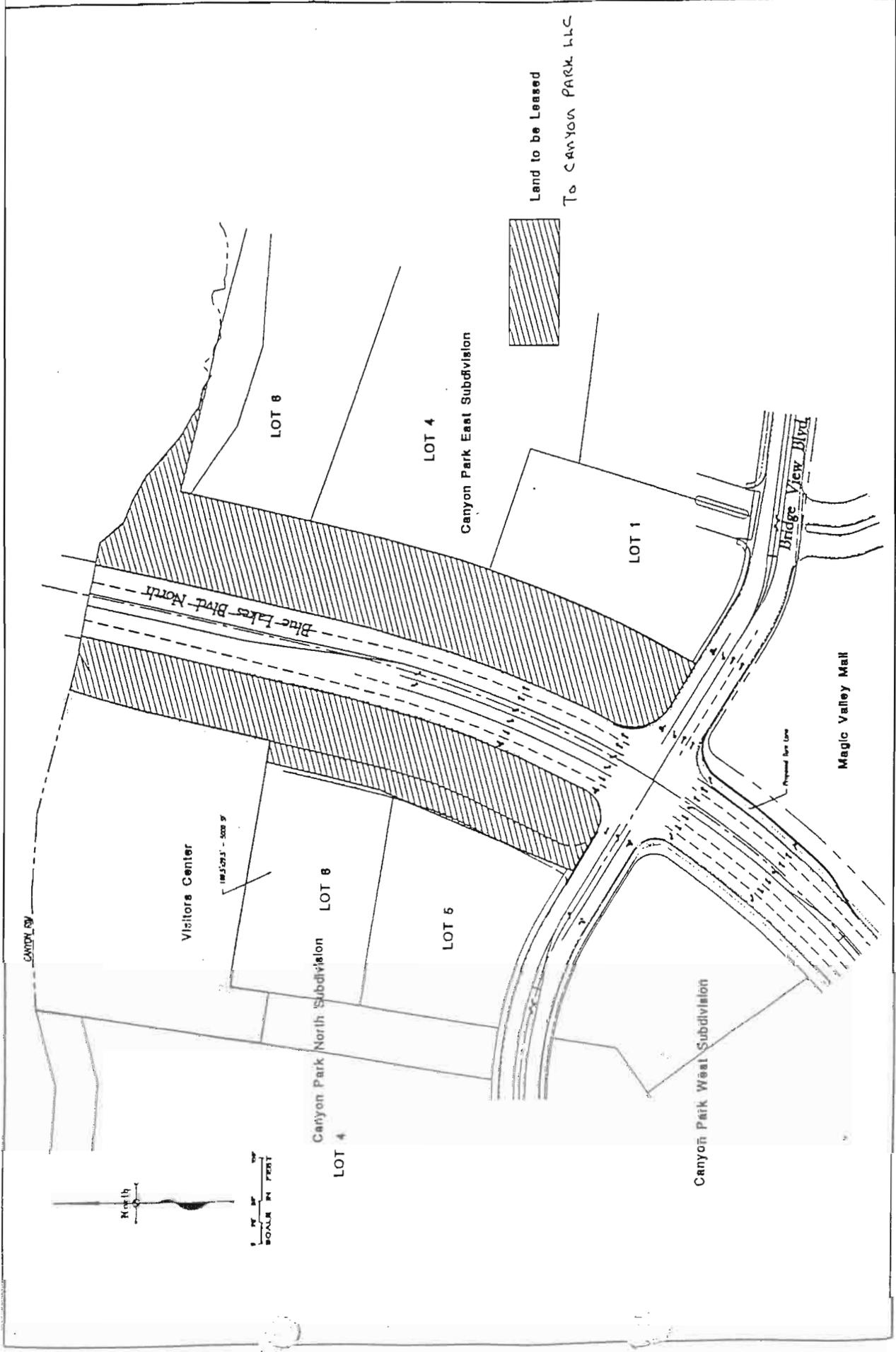
CITY OF TWIN FALLS

  
BY: TOM COURTNEY  
City Manager

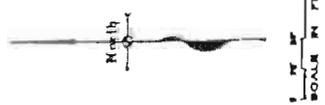
IDAHO TRANSPORTATION DEPARTMENT

  
BY: DEVIN O. RIGBY, P.E.  
District 4 Engineer

|         |                 |
|---------|-----------------|
| DATE    | 10/15/03        |
| BY      | DAVID M. HARRIS |
| FOR     | AS SHOWN        |
| SCALE   | AS SHOWN        |
| PROJECT | AS SHOWN        |
| DATE    | 10/15/03        |
| BY      | DAVID M. HARRIS |
| FOR     | AS SHOWN        |
| SCALE   | AS SHOWN        |
| PROJECT | AS SHOWN        |



Land to be Leased  
To CANYON PARK, LLC



## LEASE AGREEMENT ADDENDUM

This Lease Agreement Addendum is subject to, and is in effect concurrent with a Lease Agreement between the STATE OF IDAHO, IDAHO TRANSPORTATION DEPARTMENT, "Lessor" and the CITY OF TWIN FALLS, "Lessee" dated May 11, 2001. The leased property includes: Two (2) acres, more or less, located south and west of the south end of the Perrine Bridge. Also described as being in Lots 3 and 4, Section 34, Township 9 South, Range 17 East, Boise Meridian. Twin Falls, County. All terms and conditions agreed to in the original document are to remain enforce and shall not be modified unless agreed upon in writing by both parties.

Additional considerations for maintenance of the property described in the lease agreement are necessary due to the addition of structures by the LESSOR. It is understood and agreed that the addition of structures by the LESSOR does not diminish or extinguish the original responsibilities of the LESSEE in the Lease Agreement.

LESSOR shall perform bridge inspections on the scenic overlook structure as directed by Idaho Transportation Department Policy. Bridge Reports shall be provided upon request by the LESSOR to the LESSEE after each inspection.

LESSOR shall identify any structural deficiencies in the scenic overlook structure and determine the appropriate corrective action based on Idaho Transportation Department structural specifications. The LESSEE and LESSOR shall mutually determine the complexity and responsibility of any repairs to the scenic overlook structure.

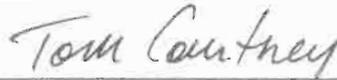
In addition to all maintenance responsibilities identified in the original Lease Agreement, the LESSEE shall perform general maintenance activities on all improvements on said premises including the scenic overlook structure.

LESSEE will be required to receive prior approval from LESSOR when adding or modifying any improvements on the premises.

IN WITNESS WHEREOF, the Idaho Transportation Department and The City of Twin Falls have executed this Lease Agreement Addendum as of the day and year acknowledged herein.

Date: 3/30/2010

CITY OF TWIN FALLS



BY: TOM COURTNEY  
City Manager

IDAHO TRANSPORTATION DEPARTMENT



BY: DEVIN O. RIGBY  
District 4 Engineer

## 4-3-91 Information Center Restrooms

This project constructed restrooms for the existing tourist information center including installation of sewer line, design, engineering, and administration.

| Recreational Program   |           | Project Type     |                           | County (Region) |  |
|------------------------|-----------|------------------|---------------------------|-----------------|--|
| Recreational Vehicle   |           | Visitor Services |                           | Twin Falls (4)  |  |
| <b>Gov't Org.</b>      | City      | <b>Award</b>     | \$63,491.00 (95.19%)      |                 |  |
| <b>Fiscal Year</b>     | 1991      | <b>Match</b>     | \$3,206.00 (4.81%)        |                 |  |
| <b>Award Date</b>      | 6/1/1990  | <b>Total</b>     | <b><u>\$66,697.00</u></b> |                 |  |
| <b>Completion Date</b> | 3/10/1992 | <b>Rating</b>    |                           |                 |  |
| <b>Acreage</b>         | 3.30      |                  |                           |                 |  |

### Grantee

City of Twin Falls  
P.O. Box 1907  
Twin Falls, ID 83303

Phone: (208) 736-2271

E-Mail:

### Directions

The information center is located on the south rim of the Snake River Canyon at the southwest corner of Perrine Memorial Bridge.



| NO. | DATE | BY | DESCRIPTION |
|-----|------|----|-------------|
|     |      |    |             |
|     |      |    |             |
|     |      |    |             |

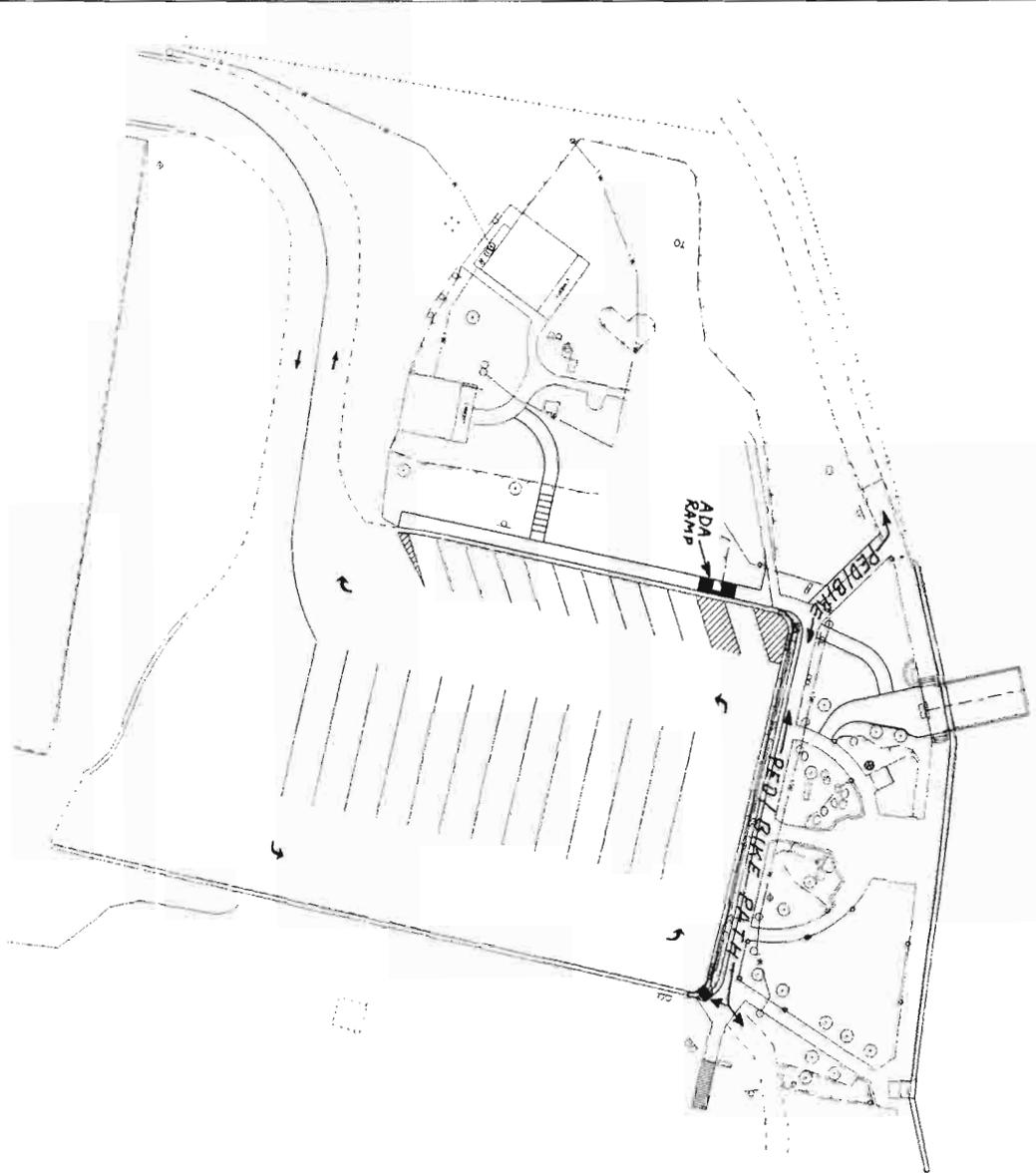
DESIGNED: J. Volhardson  
 DESIGN CHECKED: B. Miller  
 DETAILED: J. Volhardson  
 PREPARING CHECKED: S. Fackel  
 SCALES SHOWN  
 ARE FOR 11" X 17"  
 PRINTS ONLY  
 STD. FILE NAME  
 DATE: 01/04/09  
 DRAWING DATE: JAN, 2009

PROJECT NO.  
 A00917631

Snake River Canyon  
 Scenic Overlook

English  
 COUNTY: Teton  
 CITY: Jackson  
 STATE: WY  
 SHEET NO. OF 11

NOT APPROVED  
 FOR PRELIMINARY  
 CONSTRUCTION





## Monday December 23, 2013 City Council Meeting

**To:** Honorable Mayor and City Council

**From:** Dennis J. Bowyer, Parks & Recreation Director

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### Request:

Discussion of estimates of development costs for the Evel Knievel jump site.

### Time Estimate:

The staff presentation will take approximately 10 minutes. Following the presentation, we expect some time for questions and answers.

### Background:

City Council directed staff to develop cost estimates for site improvements at the Evel Knievel jump site. From the discussion at the City Council meeting, staff understands the improvements the City Council would like to discuss consist of:

1. Access road from the end of Hankins to the jump site
2. 10' walking/bicycle trail adjacent to the above access road
3. Fencing along both sides of the access road
4. Parking lot directly south of the jump site
5. Canyon Rim trail along the rim of the property
6. Restroom/souvenir building near the jump site
7. Landscaping

Below are the estimated development costs of the above seven items. These estimates are very preliminary since no plans have been yet created and specific site conditions, like subsurface rock, have not been identified. It is likely that actual costs will vary, perhaps significantly, from these estimates at such time as the improvements are constructed.

1. The access road will be approximately 2500' from the southern property boundary to the parking lot. The Engineering Department has estimated that the road could cost approximately \$875,000 to construct. This road will have to follow the City standards for road construction. This is also an estimate with a significant likelihood of variance. There are several unknown site conditions that will impact road construction costs, such as drainage needs, subsurface rock, and flatness of the road. These same conditions will also affect how wide the road can be, and road width will also impact the final cost.
2. The 10' wide walking/bicycle trail will start at the north end of Hankins and run all the way north to tie into the trail that will run along the edge of the Snake River Canyon. This trail is approximately 3665' in length. Using our estimated \$75 per linear foot for our standard trail development (10' wide trail with 2' shoulders on each side), the cost of this section of trail would be \$274,875. The trail is another improvement that could change once a design is completed. We will be limited by the property width for the improvements. For much of the 3665', the trail will have to share space with the access road. Final design of the access road and its drainage needs will determine how much width is left for the trail. We may not have the room for a 10' wide detached trail with 2' shoulders.

3. Fencing on both side of the access road, the parking lot, and the jump site itself is approximately 7,215 in length. Our land trade agreement states that we construct a pole fence; this is similar to our current fencing the City has along the trail system along the Snake River Canyon. Using our estimated cost of \$18 a linear foot, the estimated cost for fencing is \$129,870.
4. The parking will be approximately 45,000 square feet in size. Using the bids from the URA Block 133 parking lot (a similar sized parking lot the URA constructed downtown last year), staff estimates the parking lot would cost approximately \$185,000.
5. The approximate distance for the canyon rim to extend from the end of the Centennial Trail to the west end of the jump site property is 650'. Using our estimated \$75 per linear foot for out standard trail development, the cost of this section of trail would be \$48,750. Dependent on the placement of the trail, fencing along the canyon rim might be needed. The City uses the estimated cost of \$25 per linear foot. If 100' of fencing is needed, the additional cost would be \$2,500.
6. The restroom/souvenir building would be approximately 2,500 sq. ft. in size, using a price of \$140 per sq. ft.; the estimated cost of the restroom/souvenir building would be \$350,000. Additionally a well for drinking water and some type of drain field or vault system for the restroom will be needed. This would add approximately \$15,000 to the cost of the building.
7. There is not much land to landscape after the road, parking lot, and the restroom/souvenir building have been constructed. Landscaping would consist of trees, shrubbery, native plants and a drip irrigation system. Landscaping costs are only estimated at \$8,000.

Recap of Cost Estimates

\$875,000 – Road  
 \$275,000 – Trail, north south section  
 \$130,000 – Fencing, both sides  
 \$185,000 – Parking Lot  
 \$51,000 – Trail, canyon rim section  
 \$365,000 – Restroom/souvenir building  
 \$8,000 – Landscaping  
**\$1,889,000 – Total Estimated Cost**

**Approval Process:**

No approval is necessary, staff is only providing the City Council information they have requested.

**Budget Impact:**

No budget impact since this is a discussion item only.

**Regulatory Impact:**

The Council's direction on this item will determine how the City will proceed with the negotiations on the lease agreement with Beckley Media.

**Conclusion:**

Staff is seeking direction from the City Council with the lease agreement with Beckley Media.

**Attachment:**

None



**Date:** Monday, December 23, 2013, Council Meeting  
**To:** Honorable Mayor and City Council  
**From:** Chief Brian Pike, Twin Falls Police Department

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**Request:**

To update the City Council with security plans for the canyon jump that may be taking place in 2014.

**Time Estimate:**

Approximately five minutes are needed for this presentation, along with any additional time necessary to answer questions the City Council may have.

**Background:**

As security planning is moving forward in preparation for the special event slated for the first week of September 2014, we have met with Event Director Rod Woodruff to have an initial discussion about event security and crowd management. Pursuant to initial discussion held, private security will manage event sites and crowd management and law enforcement will be responsible for any type of criminal activities or incidents in which private security would need assistance or are outside of their scope of authority. Additionally, we visited the jump site on the canyon rim to get an initial assessment as to what the site could feasibly handle during the event. Mr. Woodruff indicated that the site would be too small for any type of spectator viewing; we concurred with that. We also did a cursory overview of entry and exit points to the jump site and discussed the traffic flow to and from the jump site. We expect to have more detailed event security plans from Mr. Woodruff within the next couple of months. We will maintain open lines of communication with him regarding event security.

We recognize that the security plan needs to be comprehensive and all inclusive with our surrounding agencies to include fire, law enforcement, and medical entities. We have set up a meeting with representatives from the Jerome City Police Department, Jerome County Sheriff's Office, Jerome County Prosecutor, Idaho State Police, Twin Falls County Sheriff's Office, Twin Falls County Prosecutor, St. Luke's Hospital, Jerome Fire Department, Twin Falls Fire Department, and the Twin Falls Police Department to discuss the cooperative effort an event of this type will require and the affect it will have on our communities.

**Approval Process:**

N/A

**Budget Impact:**

N/A

Agenda Item for December 23, 2013  
From Chief Brian Pike  
Page Two

**Regulatory Impact:**

N/A

**Conclusion:**

At this point in the planning process, we are moving forward to develop more detailed plans. However, until we have more specific, detailed information regarding this event, we will be bringing local fire, medical, and law enforcement agencies together to start the planning process. All involved agencies will be kept informed as we move forward.

We recognize that this is going to be a big event for the Magic Valley, and we have no intention of going it alone. Safety is a top priority for us and we plan on being all inclusive in working together with other agencies in an effort to make this a safe event.

**Attachments:**

None

AB:aed



**Date:** Monday, December 23, 2013  
**To:** Honorable Mayor and City Council  
**From:** Travis Rothweiler, City Manager  
Fritz Wonderlich, City Attorney

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**Request:**

Discussion of the first draft of the Agreement with Beckley Media to use Twin Falls City property in his effort to jump the Snake River Canyon. *This will not be an action item.*

**Time Estimate:**

The presentation will take approximately 20 minutes in addition to time needed for answering questions.

**Background:**

Attached you will find a copy of the initial draft of the Agreement with Beckley Media. This is not an action item; it will only be a discussion item. We only want to introduce it to you and begin the vetting process.

The purpose of this agenda item is to introduce the Agreement to the City Council and solicit the Council's collective thoughts.

Following are items that need to be built into the Agreement:

- Possible compensation to be provided to the City for use of City Property – *being discussed by City Council*
- Safety and Security Plan – *being coordinated by Twin Falls Police Chief Brian Pike and*
- Strategy to cover prosecution, jail and court costs that arise from the event – *had initial conversations with Twin Falls County Prosecutor Grant Loeb.*

Over the course of the next few weeks, those items will be fully developed, vetted and present ed to the City Council for inclusion into this document.

This is a first draft and a mere starting point to begin the conversation. It has been reviewed internally by many as well as by ICRMP. This has been drafted by staff and does not contain any input from Beckley Media representatives. This draft Agreement was also provided to the Chairmen of Twin Falls and Jerome Counties Board of County Commissioners as well as Twin Falls County Prosecutor for their review and consideration.

**Approval Process:**

This is only a discussion item and is not ready for Council consideration at this time. When the document is ready, approval of the Agreement requires a simple majority vote of the City Council members present.

**Budget Impact:**

There is no budget impact associated with this request.

**Regulatory Impact:**

There is no regulatory impact associated with this request.

**Attachments**

1. Draft Agreement

## LEASE PROVISIONS

### 1. Use of Leased Premises.

A. The Leased Premises may be used by Lessee for any purpose reasonably associated with an event involving a proposed vehicular jump over the Snake River (hereinafter referred to as the “Event”), provided prior written approval for any such use is first obtained from Lessor for any such use, including, but not limited to, launch area, filming and parking for required personnel. Lessee shall provide Lessor with a specific list of any and all proposed uses of the Leased Premises.

B. Any new, additional or change of use of the Leased Premises shall require Lessor's prior written consent. Any new or additional use by Lessee without the authorization of Lessor is prohibited and is grounds for termination of the Lease.

C. Lessee agrees to not commit, nor permit any damage to or waste upon the Leased Premises or upon any of the improvements, nor permit any unlawful use of the Leased Premises, nor permit any use thereof except for the purposes identified by Lessee as provided herein.

D. Lessee shall acquire and maintain all necessary permits and comply with all applicable federal, state and local laws, rules, regulations, zoning and other matters in accordance with applicable law.

E. Special Event Permit. Lessee shall obtain from the City of Twin Falls a Special Event Permit in form acceptable to the City which shall cover the real property affected by this Lease.

F. Technical Reports. When requested by the Lessor, the Lessee will furnish technical information concerning any proposed use and/or any equipment or personal property to be located on the Leased Premises.

### 2. Lease Phases.

This Lease shall proceed in three (3) phases: (1) a planning and permitting phase, (2) the event, and (3) reclamation. Each of the phases is set forth below.

A Phase 1 – Planning and Permitting. During Phase 1 of this Lease, Lessee shall engage in all such activities required to plan and obtain approvals for the conduct of the Event and to reclaim the Leased Premises. All such activities shall be described in the Research, Development and Event Plan (the “Plan”) to be developed by Lessee and submitted to Lessor for acceptance and approval in writing before Lessee commences any Phase 2 activity. All such activities and requirements shall be conducted at Lessee’s sole cost and expense.

i. Lessee shall obtain all required Government Approvals for all activities for all phases of this Lease, and shall submit to Lessor an Opinion Letter addressed to

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**EVEL KNIEVEL JUMP SITE  
LEASE AGREEMENT**

**Lessor:** City of Twin Falls, Idaho  
P.O. Box 1907  
Twin Falls, ID 83303-1907

**Lessee:** Beckley Media, LLC  
c/o Jon T. Simmons  
P.O. Box 856  
Boise, ID 83701-0856

**Lease Term:** Commencement Date: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

**Legal Description:** Lessor, in consideration of the covenants, conditions and restrictions hereinafter set forth in the Lease (including all Attachments), does hereby lease and demise unto Lessee the real property described and shown in the attachments hereto, incorporated herein by this reference, for the uses specified herein.

**Use of Premises:** See Section 1 below, of the Lease Provisions.

**Bond:** Bond in the amount of One Million Dollars (\$1,000,000) and as specified in Sections 3 “Bond” and 11 “Security Generally” below, of the Lease Provisions.

**Insurance:** Insurance in the amount of Ten Million Dollars (\$10,000,000) and as specified in Section 10 “Insurance” below, of the Lease Provisions.

**Attachments:** Attachment A: Special Terms and Conditions  
Attachment B: Legal Description  
Attachment C: Aerial Map  
Attachment D:

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Lessor signed by a law firm that includes attorneys admitted to practice and in good standing in the State of Idaho providing an opinion that all Government Approvals necessary for Lessee's commencement of construction and conduct of the Event are legally and validly issued, are held in the name of Lessee and, that Lessee is in substantial compliance with said Government Approvals as of the date of the Opinion Letter. Lessee shall provide copies of such Government Approvals to Lessor.

ii. Lessee shall submit to Lessor the Plan within \_\_\_ ( ) days of Lease approval and no later than \_\_\_\_\_ ( ) days prior to the date of the Event. Lessee must submit the Plan to the Lessor before any construction or modification of the Leased Premises. The proposed development on the Leased Premises may not start until Lessor approves the Plan in writing. Such approval shall not be unreasonably withheld. The Plan shall describe all facilities and improvements to be constructed or placed on the Leased Premises and all activities associated with the Event that may be conducted on the Leased Premises. The Plan shall include, at a minimum, (1) all Government approvals required; (2) launch site development and modification; (3) existing and planned access, access controls, and lateral roads; (4) location of sanitary facilities and pickup schedules; (5) location of other supporting facilities; (6) other areas of potential surface disturbance; (7) traffic and public safety control measures including spectators located on the river, in the canyon, on any bridges from which spectators might use to view the Event; (8) emergency first responder locations and access requirements; (9) fire prevention and suppression plan; (10) identification and location of any and all hazardous material storage including materials used in the construction of the vehicle or used in the conduct of the Event; and (11) map or maps of sufficient scale to depict the information required for all phases, and shall include, at a minimum, the following components:

a. Administrative Information. The names, phone numbers, and mailing addresses of Lessee's primary Plan supervisors and operators; the names, phone numbers, and mailing addresses of any company providing project services to Lessee and the names of each company's contact person; and any other contract operators who will be involved in the operations on the Leased Premises.

b. Facilities and Improvements. Maps and other information sufficient to locate the proposed location and specifications of all facilities and improvements on the Leased Premises. Topographic maps should show the approximate size of any surface area that may be disturbed with the placement of proposed facilities and improvements. Information concerning the construction of roads on the Leased Premises shall identify all gates and culverts and identify road construction materials, including those materials, if any, proposed to be acquired from the Leased Premises.

c. Areas of Exclusive Lessee Use. The portion(s) of the Leased Premises that Lessee proposes to hold for its exclusive use and to exclude the public and other lessees of Lessor from accessing, if any. Lessee shall describe the basis for excluding the public and other lessees of Lessor from such portions of the Leased Premises and the time frames for such required exclusive use. Dates of such exclusive use shall be identified in the Plan and on the master schedule.

d. Development Schedule. The schedule of construction and development on the Leased Premises (Development Schedule). If Lessor includes partial transitions of the Leased Premises to phases of this Lease, the Development Plan shall set forth the portions of the Leased Premises to be transitioned separately; the planned schedule for the partial transitions; and the contingencies and factors that determine the timing of each transition. Lessee shall further include a pictorial and numerical apportionment of the Leased Premises.

e. Government Approvals. A complete and accurate list of all Government Approvals that are known or reasonably believed to be necessary for the commencement of construction and for conduct of the Event, including the Opinion Letter required above. In the event that additional Government Approvals necessary for the commencement of construction or conduct of the Event come to the attention of either Party to this Lease, that Party shall immediately notify the other Party in writing and the Plan shall be amended accordingly and such additional Government Approvals shall be acquired prior to proceeding.

f. Vegetation and Soil Management. A description of the means whereby Lessee will maintain the natural vegetation, control erosion, and control noxious weeds on the Leased Premises. The description shall also include the means whereby Lessee will ensure that Lessee's activities on the Leased Premises do not adversely impact the waters on or adjoining the Leased Premises. The description shall also address the disposition of material excavated from the Leased Premises.

g. Pollution Prevention. A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to, the prevention or control of: (1) Fires; (2) Soil loss and erosion; (3) Pollution of surface and ground waters; (4) Damage to fish and wildlife or other natural resources; (5) Air and noise pollution; and (6) Hazards to public health and safety during lease activities.

h. Security Requirements. An estimate prepared by an outside party of the dollar amounts reasonably required for: (1) all proposed construction activity, Construction Security; (2) projected traffic/security costs as

described in the Plan, as Operating Security; and, (3) reclamation costs for reclamation.

B. Phase 2 – Staging or Performance of the Event. Phase 2 shall consist of the time frame required to construct or place any and all structures necessary for the Event on the Leased Premises and shall include the actual performance of the Event. Lessee shall specifically itemize each aspect of this Phase 2 in the Plan. During Phase 2, Lessee shall engage in construction of the facilities and related improvements on the Leased Premises and the implementation and satisfactory completion of all other activities identified in the Plan leading up to and including the conclusion of the Event. All costs and expenses of construction and development in Phase 2, and all subsequent additions and modifications to the facilities and related improvements shall be at the sole cost and expense of Lessee. If Lessor, in good faith, believes that Lessee has violated or failed to obtain any Governmental Approvals necessary for activities during Phase 2 of this Lease, then Lessor shall grant Lessee a \_\_\_\_ (\_\_) day period and opportunity to seek the Governmental Approvals, and if such approval is deemed necessary for Lessee's activities and any such Governmental Approvals are not obtained, Lessor shall have the right, without limitation, to require Lessee to cease activities related to such violation until the violation has been remedied to the satisfaction of Lessor in its sole discretion.

C. Phase 3 – Reclamation Plan. The Reclamation Plan shall set forth the means whereby Lessee shall restore the Leased Premises to its natural contour and vegetative state following any construction or modification of the Leased Premises, and upon completion of the Event, or upon the expiration or any termination of this Lease. Lessee must reclaim all of the Leased Premises disturbed by Lessee's activities in accordance with applicable reclamation procedures. Lessee shall conserve, stockpile, and protect topsoil to enhance reclamation. Lessee shall take all necessary steps to avoid a threat to life or property or an unreasonable risk to subsurface, surface, or atmospheric resources. The Reclamation Plan shall address the decommissioning and reclamation of all planned construction of facilities and improvements by Lessee, including, but not limited to, the disposal of any known or unknown Hazardous Substance located on the Leased Premises at the termination of this Lease. Lessee shall also submit to Lessor a Hazardous Materials/Waste Management Plan in the event such materials will be used in the construction and/or operation of the vehicle or other activities associated with the Event. No construction of any facilities or improvements, and no alteration of the Leased Premises, nor any change in such construction or alteration, shall occur until Lessor has accepted, in writing, the Reclamation Plan and any Hazardous Materials/Waste Management Plan.

D. Length of Phases.

ii. Maximum Phase 1 Length. Unless extended by Lessor in writing, Phase 1 of this Lease shall not extend longer than \_\_\_\_ (\_\_) days from the Commencement Date.

iii. Maximum Phase 2 Length. Unless extended by Lessor in writing, Phase 2 of this Lease shall not extend beyond \_\_\_\_\_, 2014.

iv. Maximum Phase 3 Length. Phase 3 of this Lease shall commence upon confirmation that all Phase 2 Lease requirements have been fulfilled and the completion of the Event or upon earlier termination of this Lease for any reason. The Reclamation obligations shall survive the termination of this Lease. Phase 3 tasks will include all actions identified in the Reclamation Plan and any Hazardous Materials/Waste Management Plan, and shall conclude upon Lessor's written confirmation that all Phase 3 Lease requirements have been fulfilled to Lessor's satisfaction.

### **3. Bond.**

Concurrent to the execution of this Lease by the Lessee, the Lessee shall furnish a good and sufficient bond in the amount specified in the Summary of Lease Provisions in favor of the Lessor to protect the Lessor and the public against loss due to violation of any provision of this Lease. The period of liability of any bond shall not be determined until all lease terms and conditions have been fulfilled and the bond is released in writing Lessor.

### **4. Sublease and Assignment.**

A. No Sublease or Assignment Without Consent. Lessee shall not sublease all or any part of the Leased Premises, or sublease all or any part of Lessee's improvements, or assign this Lease, or take out a mortgage or deed of trust without first obtaining the written consent of Lessor.

B. Necessary Forms. Any request for approval of a sublease, assignment, mortgage, or deed of trust, must be in writing, on forms provided by the Lessor and accompanied by a processing fee to be established by Lessor. Any attempt by Lessee to assign, sublease, mortgage, or subject Lessee's leasehold interest in this Lease or any improvements to be placed upon the Leased Premises to any lien, without the prior written consent of Lessor, shall be void and shall constitute a breach of this Lease.

C. Good Standing Required. No request for Lessor's approval of any assignment, sublease, mortgage or lien, will be considered unless all rent due, late payment charges, and interest have been paid in full, and Lessee is in good standing under the terms of the Lease.

D. Assignment Subject to Terms. Any assignment shall be subject to all of the terms and provisions of this Lease.

E. Specific Transaction Only. Any consent by Lessor herein contained or hereafter given to any act or assignment, sublease, mortgage, pledge, or encumbrance shall be held to apply only to the specific transaction hereby or thereby approved.

F. Proof of Assignment. In all cases of an approved assignment by Lessor due to sale of the Lessee's interest, Lessee must provide to Lessor one copy of the purchase agreement or contract of sale signed and acknowledged by the buyer (Assignee) and seller (Assignor). In the case of assignment without a sale, appropriate documentation must be provided to the Lessor establishing that the Lease should be assigned. This may include, but not be limited to, a letter from Lessee indicating the transfer of the Lease as a gift; a divorce decree; a copy of will or probate order. Lessor may require additional proof as necessary.

G. Sublease. Lessee may sublease, provided that each such sublease shall be subject to all terms of this Lease, including termination of Lessee's interest under this Lease. Any such sublease shall be subject to and subordinate to the rights of the Lessor under this Lease, and any such sublease shall include, but not be limited to, the following:

- i. No sublease shall relieve Lessee of its responsibility to pay and perform all of its obligations under this Lease to Lessor.
- ii. The term of the sublease may not exceed the term of this Lease, and shall terminate upon any termination or expiration of this Lease.
- iii. The Lessor is not liable for any act or omission of the Lessee.
- iv. The Sublessee will abide by all terms and conditions of this Lease.
- v. The Lessor is not liable any for pre-payment, security deposit or other pre-paid charge made to Lessee by any sublessee at any time, including the early termination of this Lease or expiration of the Lease term.
- vi. The Lessor may impose additional requirements as a condition of approving the sublease request.

## **5. Lessee's Compliance with Applicable Laws and Rules.**

A. Full Compliance. Lessee's use of the Leased Premises and all improvements to be constructed or placed thereon, shall fully comply with all applicable federal, state and local governmental statutes, ordinances, rules, regulations and laws. Lessee shall comply with all applicable rules and regulations and standards currently in effect or hereafter adopted by Lessor.

B. No Waste or Nuisance. Lessee shall not use the Leased Premises in any manner that would constitute waste, nor shall the Lessee allow the same to be committed thereon. The Lessee shall not do anything or allow any action which will create a nuisance or a danger to any person or property not the immediate subject of the event.

## **6. Environmental, Safety, and Sanitary Requirements.**

A. Sanitary Requirements. Lessee shall at all times keep the Leased Premises in a clean and sanitary condition, free of trash, noxious weeds, garbage and litter, so that the Leased Premises are maintained in as nearly natural state as possible. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local law, rules and regulations pertinent to Lessee's use. The Lessee shall store and dispose of all trash and garbage in conformity with all legal requirements. Lessee is responsible for all costs associated with sewage, garbage, cleanup, restoration and litter disposal.

B. Fire and Safety Regulations. Lessee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances for fire protection and prevention of fire. Lessee shall keep the Leased Premises free from fire hazards. Lessee is prohibited from burning garbage or trash. The burning of wood or other debris shall require the prior written permission of Lessor and must comply with applicable federal, state, or local law, regulation, rule, and ordinance.

C. No Hazardous Materials Without Prior Notice. Lessee shall neither use nor permit upon the Leased Premises the use, placement, transport or disposal of any hazardous waste or any other substance that is, or is suspected to be, a hazardous substance or material without prior notice to Lessor and to the extent such use is in full and complete compliance with any applicable federal, state or local law, rule, regulation or ordinance. In the event any hazardous waste or substance is used by Lessee as provided in this Lease, and subject to prior notification to Lessor, Lessee shall, in addition to any other obligation or requirement herein, prepare and submit to Lessor for prior approval and consent, a "Hazardous Substance Plan", which shall include, but shall not be limited to, the express identification of each and every hazardous waste or substance to be used by Lessee, the need to use such waste or substance, detailed plans of how such hazardous wastes and substances will be managed upon and removed from the Leased Premises, and a detailed management and clean-up plan in the event of any release of any hazardous waste or substance, including, but not limited to, any leak or adverse environmental impact or contamination from any such hazardous waste or substance. . Lessee shall be responsible, at its own expense, for removing or taking other appropriate remedial action regarding such wastes, substances, or materials which Lessee may cause or allow to be introduced upon the Leased Premises, in accordance with applicable federal, state, or local law, rule, regulation, or ordinance. In the event hazardous materials are used in the course of the Event that could be introduced onto the Leased Premises, Environmental Impairment/Pollution Insurance will be required in an amount determined by the Lessor.

## **7. No Warranty of Suitability.**

A. No Warranty. Lessee acknowledges that neither the Lessor, nor any agent or designee of the Lessor, has made any representation or warranty with respect to the Leased Premises, or concerning the suitability of the Leased Premises for the uses intended by

the Lessee. Lessee acknowledges that it has accepted the Leased Premises in an "AS IS CONDITION," and accepts liability for its condition.

B. Quiet Enjoyment. Lessor agrees that the Lessee, upon payment of the rent and performing the terms of this Lease, may quietly have, hold, and enjoy the Leased Premises during the term hereof.

## **8. Payment of Taxes and Assessments.**

On or before any due dates, the Lessee agrees to pay any and all real or personal property taxes, assessment or fees that may be assessed or levied by any governmental authority asserting such authority over the Leased Premises, any improvement thereon, or Lessee's leasehold interest,. Lessee shall make such payment directly to the taxing authority and agrees to hold Lessor harmless from any claim or assessment.

## **9. Construction and Improvements.**

A. Water Development. Lessee shall not drill any new or existing water well, use any existing water well, nor develop any use of any water source without first obtaining the prior written consent of the Lessor as well as any applicable governmental authorities responsible for adjudicating, developing or permitting water rights. Lessee agrees that all water rights shall be in the name of the Lessor.

B. Construction and Repair of Improvements. No construction of any improvement upon or over the Leased Premises is allowed without the prior consent of the Lessor.

C. Liens and Encumbrances. Lessee has no authority to, and shall not place any lien upon, or otherwise encumber the Leased Premises, Lessee's leasehold interest or Lessee-owned improvements upon the Leased Premises. The Lessee shall not place a lien upon or encumber the Lease, Lessee's leasehold interest or Lessee-owned improvements unless given prior written consent by the Lessor.

D. Treatment of Existing Improvements. Existing improvements, as of the date of execution of this Lease, if any, are attached hereto and incorporated herein in Attachment E. Upon Lease expiration without renewal; Lease termination; or upon default of the Lessee:

i. Lessor shall have the right to require Lessee to remove all Lessee-owned improvements and all other improvements placed or allowed upon the Leased Premises by Lessee, and to require Lessee to restore the Leased Premises, as nearly as is reasonably practical, to their natural or previous condition, all at Lessee's sole cost and expense.

ii. Lessor has the right to enter the Leased Premises and remove any of the improvements, or otherwise dispose of such improvements, and to charge the cost

of removal and/or disposal and/or restoration to Lessee. Lessee shall also be responsible for all collection costs, including reasonable attorney fees and interest incurred or accrued prior to, and following the filing of suit, including costs and fees incurred on appeal.

iii. Lessee shall quietly surrender the Leased Premises to Lessor.

iv. Lessor shall reserve the right to purchase existing improvements from Lessee at a reasonable market value, as defined herein, as of the date of expiration.

E. Treatment of Improvements Upon Abandonment. If such removal or purchase as described herein, has not occurred by the date that the Lease expires and has not been renewed, has been terminated, or at the date of Lessee default, all rights, title and interest of the Lessee to any of the improvements, shall upon thirty (30) days written notice to Lessee, or at a date determined at the sole discretion of the Lessor but not less than thirty (30) days, be deemed to revert to the Lessor, and shall be considered abandoned in place by the Lessee.

F. Market Value. Market value is defined in this Lease as: "The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms for which the specified improvement(s) should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress."

G. Treatment of Non-approved Improvements. Treatment of Non-approved Improvements at any time during the Lease and upon Lease expiration without renewal, termination, or default under the Lease.

i. Lessor shall have the right to require Lessee to remove all non-approved improvements placed, or caused to be placed upon the Leased Premises, and to require Lessee to restore the Leased Premises, as nearly as is reasonably practical, to their natural or previous condition, all at Lessee's sole cost and expense. If removal as described above has not occurred by the date that the Lease expires, and the Lease has not been renewed, has been terminated, or as of the date of the Lessee default, all right, title and interest of the Lessee to any of the non-approved improvements shall, upon thirty (30) days written notice to the Lessee, or at a date determined at the sole discretion of the Lessor, but not less than thirty (30) days, be deemed to revert to the Lessor, and shall be considered abandoned in place by the Lessee.

ii. Any non-approved improvements not removed by the Lessee may be removed by the Lessor at the Lessee's sole cost and expense. Any attorney fees and collection costs incurred by the Lessor shall also be the Lessee's responsibility. Lessor has the right to enter the Leased Premises and remove any of the

improvements, or otherwise dispose of such improvements, and to charge the cost of removal and/or disposal and restoration to the Lessee. Lessee shall also be responsible for all collection costs including, but not limited to, reasonable attorney fees and interest incurred or accrued prior to, and following the filing of suit, including costs and fees incurred on appeal.

#### **10. Insurance.**

Lessee shall purchase and keep in force all insurance required by this Lease. Any failure to comply with any of the terms of this section shall be a breach of this Lease. For the duration of this Lease and until all activity in accordance with this Lease is completed, Lessee shall have and maintain or cause to be maintained, at Lessee's expense, the types of insurance set forth below and shall comply with all limits, terms and conditions of such insurance, and shall require all of its contractors and subcontractors to maintain the same types of insurance and limits. By requiring the insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability to Lessor or under any indemnities granted to Lessor in this Lease.

A. Commercial General and Umbrella Liability Insurance. Lessee shall maintain commercial general liability ("CGL") with a combined limit of not less than ten million dollars (\$10,000,000) each occurrence. If such CGL insurance, or any umbrella policy, contains a general aggregate limit, it shall apply separately to the Leased Premises, shall not be less than ten million dollars (\$10,000,000), and shall provide that defense costs shall be and remain outside policy limits. Lessee waives all rights against Lessor and any additional insured for recovery of damages to the extent these damages are covered by the CGL or commercial umbrella liability insurance maintained pursuant to this Lease. CGL insurance and any umbrella policy shall:

- i. Be in a form and from an insurance company satisfactory to Lessor and shall cover liability for bodily injury, property damage, and personal injury arising from Lessee's use and/or occupation of the Leased Premises including, without limitation, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract including the tort liability of another assumed in a business contract; and
- ii. Include the City of Twin Falls, and their officers, agents, and employees respectively as additional insured, and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, and non-contributory with, any additional insured.

B. Builders Risk/Installation Floater Insurance. During the course of any construction or alteration of any facilities or improvements, if any, on the Leased Premises by Lessee, Lessee shall maintain in force, at its own expense, Builders Risk/Installation Floater Insurance, including soft costs and any offsite locations, on an all risk of direct physical loss from, including earthquake and flood (if reasonably available), for an amount

proportionate to the amount of the construction contracts performed on the Leased Premises. Any deductible amount shall not exceed two hundred fifty thousand dollars (\$250,000) for each loss, except earthquake and flood deductibles shall not exceed two percent (2%) of the value at risk at the time of each loss or two hundred fifty thousand dollars (\$250,000) for each loss, whichever is more. The policy shall include, as an additional insured, Lessor as its interests may appear and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor.

C. Property Insurance. Lessee shall throughout the term of this Lease, at its own expense, keep and maintain in full force and effect commercial property insurance covering the facilities and improvements, if any, located on the Leased Premises. Commercial property insurance shall, at a minimum, cover all perils insured under the ISO Special Causes of Loss Form. The amount insured shall equal the full estimated replacement cost of the property insured. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as otherwise appropriate under the particular policy form. Lessor shall be included as a loss payee under the commercial property insurance, and such status as an additional insured shall be evidenced by an endorsement acceptable to Lessor. During Phase 2 of this Lease, Lessee shall purchase, as part of Lessee's property insurance, business income, business interruption, extra expense or similar coverage, for actual loss sustained. In no event shall Lessor be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured.

D. Workers Compensation and Umbrella Liability Insurance. Lessee and its subcontractors, if any, shall maintain all statutorily required Workers Compensation coverage. Coverage shall include Employer's Liability, at minimum limits of five hundred thousand dollars/five hundred thousand dollars/five hundred thousand dollars (\$500,000 / \$500,000 / \$500,000). Lessee must maintain coverage issued by a surety licensed to write workers' compensation insurance in the state of Idaho or from a surety issued an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

E. Environmental Impairment/Pollution Insurance. In the event hazardous materials are used in the course of the Event that could be introduced onto the Leased Premises, Environmental Impairment/Pollution Insurance will be required in an amount determined by the Lessor.

F. Lessee's Insurance Policy Requirements.

All insurance required under this Article shall be with companies licensed and admitted in Idaho and approved for this Lease by Lessor. Lessor's general requirements for such approval include a current A.M. Best's rating of A- or better. Prior to taking occupancy or commencing construction and at least annually thereafter, Lessee shall furnish Lessor with a certificate of insurance executed by a representative of each insurer duly authorized to bind coverage, and a copy of any applicable policy or policy endorsement

showing compliance with all insurance requirements set forth herein. All policies required under this Article shall be written as primary policies and not contributing to or in excess of any coverage Lessor may choose to maintain. Lessee shall provide Lessor with certificates of insurance and policy endorsements as follows:

| <u>Coverage</u>                                     | <u>Evidence of Coverage</u>   |
|---|---|
| CGL   | Policy Endorsement and copy of policy evidencing each required coverage |
| Builders Risk/Installation Floater Insurance        | Policy Endorsement and copy of policy evidencing each required coverage |
| Property Insurance                                  | Policy Endorsement and copy of policy evidencing each required coverage |
| Automobile Liability                                | Certificate of Insurance evidencing required coverage                   |
| Workers Compensation/ Employers Liability Insurance | Certificate of Insurance evidencing required coverage                   |

Should any of the polices described herein be cancelled or terminated prior to the expiration date thereof, the insurer affording coverage, and Lessee shall also provide Lessor thirty (30) days' written notice prior to any such cancellation or termination or, if such prior advanced written notice cannot reasonably be provided, then either the insurer or Lessee shall immediately notify Lessor of any such cancellation or termination as soon as either becomes aware of any such cancellation or termination. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits of insurance exhausted by Lessor, shall not affect coverages provided to Lessor, the City of Twin Falls, its officers and employees. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance. Lessee shall provide certified copies of all insurance policies required above within thirty (30) days of Lessor's written request for said copies. If Lessee's liability policies do not contain the standard ISO separation of insured provision, or a substantially similar clause, they will be endorsed to provide cross-liability coverage.

F. Proof of Insurance. Prior to taking occupancy or commencing operations or construction, and at least annually thereafter, Lessee shall furnish Lessor with a certificate of insurance on the form approved by Lessor executed by a representative of

each insurer duly authorized to bind coverage, together with a copy of any applicable policy and policy endorsement showing compliance with all insurance requirements set forth herein, including evidencing Lessor as additional insured. Lessee shall provide certified copies of all insurance policies required above within fifteen (15) days of Lessor's written request for certified copies. Failure of Lessor to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Lessor to identify a deficiency from evidence that is provided shall not be construed as a waiver of Lessee's obligation to maintain such insurance.

G. Payment of Premiums - Policy Renewals - Lessor's Right to Purchase. Lessee shall pay premiums and be responsible for all deductibles for all of the insurance policies it is required to carry under the terms of this Lease, and shall deliver to Lessor evidence of such payment before the payment of any premiums become in default. Lessee shall also cause renewals of expiring policies and shall furnish Lessor with certificates showing such renewed policies at least ten (10) days before the policy's expiration date. If Lessee fails to maintain the insurance as set forth herein, while such failure is a default under the terms of this Lease, Lessor shall have the right but not the obligation to purchase said insurance at Lessee's expense, in addition to any other remedy available at law or in equity.

H. No Limitation of Liability. By requiring insurance herein, Lessor does not represent that coverage and limits will necessarily be adequate to protect Lessee, and such coverage and limits shall not be deemed as a limitation on Lessee's liability pursuant to this Lease.

## **11. Security Generally.**

A. Format and Renewal. All bonds, letters of credit, and either cash or certificates of deposits (which may be referred to throughout this Lease generically as "bonds") shall be in a form acceptable to Lessor, conditioned upon Lessee's good faith compliance with all laws and rules of the City of Twin Falls, all provisions of this Lease, and all terms and conditions imposed by the Lessor. All bonds shall be issued by an Idaho qualified U.S. Bonding Corporation and all letters of credit, and cash or certificates of deposits shall be subject to Lessor's approval and shall provide for notice to Lessor prior to any cancellation or lapse thereof. Upon the failure of Lessee to maintain any required bond, letter of credit, or cash or certificate of deposit in full force and effect at all times during the life of this Lease, Lessor shall have the right to cancel this Lease or to declare a default and terminate this Lease. A substitute bond, a new letter of credit, or a new cash or certificate of deposit, or an extension of the expiration date of any existing bond, letter of credit, or cash or certificate of deposit, must be received by Lessor no later than thirty (30) days before the expiration, cancellation or other termination of the bond, letter of credit, or cash or certificate of deposit. Failure to provide such replacement thirty (30) days prior to the expiration, cancellation or other termination shall constitute a material breach of this Lease and shall be grounds for Lessor to terminate this Lease, pursue any other remedy at law or in equity, including, but not limited to, presenting any such letter of credit, or cash or certificate of deposit for payment, or to make demand under any such

bond. Presentation of any such bond, letter of credit, or cash or certificate of deposit for payment, or the demand and payment under any such bond, letter of credit, or cash or certificate of deposit, shall in no way limit the liability or obligations of Lessee, or the rights and remedies of Lessor, under this Lease. The form of any bonds, letters of credit, and cash or certificates of deposit shall be presented to Lessor for acceptance prior to the issuance of such discretion, or shall be modified or amended as may be reasonably required by Lessor.

B. Lessor Determined Bond. The amount of bond or other security to be obtained by Lessee for the aspect of Lessee's operation described in this Lease shall be determined by Lessor.

C. Adjustment of Security Amount. At intervals of not less than three (3) months after approval of the Plan and the Reclamation Plan, as applicable, Lessor may, in Lessor's reasonable discretion, following consultation with Lessee, revise the estimate of the cost of development or reclamation in accordance with the approved plan to reflect then current costs and prices for the work and materials necessary for work under the plan. Within thirty (30) days of receipt of such revised estimate, Lessee shall then cause the existing security to be adjusted to reflect the amount of the revised estimate.

D. Construction Security. Prior to the commencement of construction of any facilities or improvements on the Leased Premises, Lessee shall furnish good and sufficient payment and performance bonds, letters of credit, cash or certificate of deposit, all subject to approval by Lessor in Lessor's discretion. Any such bonds, letters of credit, cash or certificates of deposit shall be in an amount prorated for that portion of the contracted construction activity to take place in or upon the Leased Premises and shall be one-hundred twenty five percent (125%) of the full contract amount required for all such construction activities of facilities and improvements on the Leased Premises; said security shall be in favor of Lessor to protect Lessor against any and all loss due to Lessee's failure to complete such construction in accordance with the Plan or Lessee's failure to pay contractors, subcontractors or others who may provide goods and services to Lessee. Any bond, letter of credit, cash or certificate of deposit accepted by Lessor pursuant to this Lease shall be made payable to Lessor upon demand or presentment for payment. The period of liability to maintain the security shall not be terminated until the completion of construction of all facilities and improvements to be constructed on the Leased Premises under the applicable contract for construction as determined by Lessor; the expiration of the timeframe under applicable law for filing of lien claims with respect to such construction has expired; and upon the prior written notice by Lessee to Lessor certifying the satisfaction of such events, and the written consent of Lessor to release such security, which consent shall not be unreasonably withheld.

E. Reclamation Security. Upon approval of the Reclamation Plan, Lessee shall furnish a good and sufficient letter of credit, bond, cash or certificate of deposit in the amount equal to one-hundred twenty five percent (125%) of Lessor's reasonable estimate of the cost of reclamation in accordance with the approved Reclamation Plan. The period of

liability of the letter of credit, bond, cash or certificate of deposit shall not be terminated until all terms and conditions of the approved Reclamation Plan have been completed, and the security is released in writing by the City Manager.

## **12. Indemnification & Release of Liability.**

A. Indemnification. Lessee shall indemnify, defend, and hold harmless the Lessor, the City of Twin Falls, and its officers, agents, and employees from and against any liability, claims, damages, losses, debts, obligations, judgments, expenses or actions, including, but not limited to, reasonable attorney fees, caused by or arising out of any act or omission of Lessee, or Lessee's agents, employees or invitees, or any act or omission arising out of or connected with the use or occupation of the Leased Premises, including the Event, or arising from the Lessee or Lessee's agents, or employees' failure to comply with any applicable law. If it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and attorney fees incurred by the Lessor in effecting any such defense or response in addition to all other sums that the Lessor may be called upon to pay by reason of the entry of any judgment against it in any litigation in which such claim is asserted. This indemnification shall survive the termination or expiration of this Lease.

B. Release of Liability. Lessee and the person the subject of the Event (the "Jumper") does hereby release, and shall sign a release of liability (the "Release"), in a form acceptable to Lessor, on behalf of itself and anyone claiming by, through, or under Lessee and/or the Jumper, releasing Lessor, the City of Twin Falls, its officers, agents, and employees, from any and all liability of any kind related to the Event, including, but not limited to, the personal injury or death of the Jumper.

## **13. Inspection Rights.**

Inspection by Lessor. Lessee shall permit Lessor or Lessor's authorized agent or designee to inspect and enter the Leased Premises and any improvement at any reasonable time.

## **14. Reservations by Lessor.**

The Lessor expressly reserves and excepts the right of ingress and egress over and across the Leased Premises for itself and its assigns on existing roads or suitable alternative roads provided by the Lessee.

## **15. Confidential Information.**

Insofar as Lessee seeks to maintain the confidentiality of its confidential or proprietary information, Lessee must clearly identify in writing the information it claims to be confidential or proprietary. Lessee acknowledges that Lessor is subject to the Idaho Public Records Law (Idaho Code §§ 9-337 through 9-350). Lessor shall maintain the confidentiality of the identified information insofar as it is consistent with applicable laws or regulations. In the event Lessor receives a request for the information identified by Lessee as confidential, Lessor shall notify

Lessee and specify the date Lessor will be releasing the requested information. Any effort to prohibit or enjoin the release of the information shall be Lessee's sole responsibility and at Lessee's expense. If Lessee fails to obtain a court order enjoining the disclosure, Lessor shall release the information on the date specified in Lessor's notice to Lessee without any liability to Lessee.

## **16. Lessee's Default.**

A. Lessee's breach of any of the terms of this Lease shall constitute a default and shall be a basis for termination of the Lease. Lessor shall provide Lessee written notice of the breach or violation and, if applicable, the corrective action required of Lessee. The notice shall specify the reasonable time to make a correction or cure the violation or breach if a correction or cure is possible. If the corrective action or cure is not taken within the specified time or does not occur, then the Lessor may cancel the Lease effective on the date specified for the corrective action or cure to have taken place.

B. Lessee agrees to relinquish possession of the Leased Premises immediately upon any termination or expiration of the Lease and to immediately remove any and all improvements placed upon the Leased Premises and to restore the Leased Premises as set forth above. In addition to the rights and remedies specifically granted to Lessor under this Lease, Lessor shall have such other rights and remedies as against Lessee as may be available at law or in equity, and Lessor's pursuit of any particular remedy for breach or default shall not, in and of itself, constitute a waiver or relinquishment of any other available remedy, claim or cause of action by Lessor against Lessee.

## **17. Termination.**

### **A. Termination by Lessee.**

i. During Phase 1 of this Lease, Lessee may terminate this Lease by giving Lessor \_\_\_\_\_ ( ) days' prior written notice of termination. Upon termination during Phase 1, Lessee shall not be entitled to refund or credit of the Rent or bonus bid paid by Lessee. If this Lease is terminated during Phase 1, Lessee shall restore the Leased Premises to its natural contour and vegetative state.

ii. During Phase 2 of this Lease, Lessee may terminate this Lease by giving Lessor \_\_\_\_\_ ( ) days' prior written notice of termination and completing all Lessee's obligations under the Reclamation Plan accepted by Lessor. Upon termination during Phase 2, Lessee shall not be entitled to refund or credit of the Rent or bonus bid paid by Lessee. If this Lease is terminated during Phase 2, Lessee shall restore the Leased Premises to its natural contour and vegetative state.

iii. Upon termination during Phase 1 or Phase 2, Lessee's actions on the Leased Premises shall be limited to those necessary for completion of its obligations under the Reclamation Plan.

iv. If different Phases are occurring simultaneously, then the Termination provisions applicable to the most advanced Phase shall apply.

**B. Termination by Lessor for Lessee's Default.**

i. Lessee shall be in default hereunder if any one or more of the following occurs:

a. Lessee fails to pay when due any sum due hereunder;

b. Lessee fails to observe or perform any other of the terms, covenants, agreements, conditions or undertakings herein contained to be kept, observed and performed by Lessee under this Lease when the same become due;

c. Lessee becomes insolvent or proceedings in bankruptcy or for liquidation, reorganization or rearrangement of Lessee's affairs are instituted by or against Lessee;

d. A receiver or trustee is appointed for all or substantially all of Lessee's business or assets;

e. A trustee is appointed for Lessee after a petition has been filed for Lessee's reorganization under the United States Bankruptcy Code, or if this lease be rejected under § 365 of the United States Bankruptcy Code;

f. Lessee shall make an assignment for the benefit of its creditors;

g. Lessee makes a transfer, novation, assignment, or sublease not approved by Lessor;

h. Lessee's failure to complete the requirements of any phase;

i. Lessee's failure to complete a phase prior to the conclusion of its maximum period without the prior written approval of Lessor;

j. Lessee allows a lien to be filed or continued in existence without Lessor's express prior written consent ; or

k. Any other event or condition defined as a default in this Lease.

ii. The following cure periods shall apply to Lessee's default under this Lease.

a. As to any failure referred to in Subsection B.i.a, B.i.g, B.i.h, B.i.i or B.i.k, above, Lessee shall be allowed fifteen (15) days from the date of notice thereof to effect a cure by payment in full of such Rent or other sum due hereunder, or curing any other event of default.

b. As to any failure or default referred to in this Lease, Lessee shall be allowed the period specified in this Lease for cure, or if no cure period is specified, Lessee shall be allowed thirty (30) days from the date of notice thereof to effect a cure, provided however, in the case of any curable failure referred to in Subsection 19.B.i.b, above, which cannot with diligence be cured within the applicable cure period, if Lessee shall commence to cure within the applicable cure period and thereafter to prosecute continuously to complete the curing of such failure with diligence, the time within which to cure the same shall be extended for such period as may be reasonably necessary to complete the curing of the same with diligence.

c. As to an occurrence of any event described in Subsections B.i.c through B.i.f, and B.i.j, above, but only if such is the result of action brought against Lessee and without Lessee's concurrence, Lessee shall be allowed a period of thirty (30) days from the commencement of proceedings to have the same dismissed and any receiver or trustee appointed thereunder discharged.

d. All default and grace periods shall be deemed to run concurrently and not consecutively.

iii. In the event of any default by Lessee, if not cured within the applicable cure period, if any, Lessor, at its election, may enforce, by judicial action or otherwise, any one, or any combination, of any and all remedies available at law or in equity, or without limitation of any such remedies, any one, or any combination, of the following:

a. Lessor may terminate this Lease, re-enter upon all or any part of the Leased Premises, either with or without process of law, Lessee hereby waiving any demand for possession, and remove Lessee and any persons or property from the Leased Premises, and Rent shall become due thereupon and be paid up to the time of such re-entry, dispossession or termination;

b. Lessor may re-let the Leased Premises or any part or parts thereof, either in the name of Lessor or otherwise, for a term or terms, which may at Lessor's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant

concessions or free rent or charge a higher rental than that in this Lease;  
and

c. Lessor may collect from Lessee damages incurred by or resulting to Lessor for the failure of Lessee to observe and perform any term, condition, covenant, duty or obligation of this Lease.

d. Lessor may allow the Lease to remain in full force and effect and enforce all of Lessor's rights and remedies hereunder.

e. Remove Lessee's property and store the same at Lessee's expense, or require Lessee to remove the same.

iv. The failure of Lessor to re-let the Leased Premises or any part or parts thereof shall not release or affect Lessee's liability for damages. In computing such damages there shall be added to the said deficiency such expenses as Lessor may incur in connection with re-letting, such as legal expenses, reasonable attorney fees, brokerage, advertising and for keeping the Leased Premises in good order or for preparing the same for re-letting. Any such damages shall be paid in installments by Lessee on the Rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any period shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent period by a similar proceeding. Lessor, in putting the Leased Premises in good order or preparing the same for re-

C. Surrender by Lessee Upon Expiration of Lease Term or Upon Termination. Upon expiration of the Lease term or if sooner terminated, Lessee shall immediately and peaceably surrender and deliver up the Leased Premises to Lessor.

D. Reclamation of Leased Premises. Prior to or upon expiration or termination of this Lease, Lessee shall complete reclamation of the Leased Premises in accordance with the Reclamation Plan accepted by Lessor.

## **18. Notices.**

A. All notice(s) including, but not limited to, a change in address, given in connection with the Lease shall be in writing and shall be delivered either by hand or by regular United States Mail, return receipt requested, to Lessor at the address listed in the Summary of Lease Provisions, and to Lessee at the address listed in Summary of Lease Provisions.

B. Any notice or correspondence mailed to Lessee at the last identified address shall be deemed effective delivery. It is the Lessee's duty to notify Lessor, in writing, of any change in Lessee's mailing address.

## **19. Waiver.**

The waiver by the Lessor of any breach of any term, covenant, or condition of this Lease shall not be deemed to be a waiver of any past, present, or future breach of the same or any other term, covenant, or condition of this Lease. The acceptance of rent by the Lessor hereunder shall not be construed to be a waiver of any term, covenant or condition of this Lease. No payment by the Lessee of any amount less than that due and owing, according to the terms of this Lease, shall be deemed or construed to be other than a partial payment on account of the most recent rent due, nor shall any endorsement or statement on any check or letter accompanying any payment be deemed to create an accord and satisfaction. Any payment shall be applied first to late charges, accrued interest and costs incurred by the Lessor as a result of the Lessor's breach of any term, covenant or condition of this Lease, then to the principal balance owing by the Lessee to the Lessor hereunder.

## **20. Attorney Fees and Costs.**

In the event either party to this Lease shall institute a lawsuit of any kind under this Lease or any action is taken by either party to obtain performance of any obligation due under this Lease, then the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, accountant fees and appraiser fees and fees of other experts, reasonably incurred therein by the prevailing party, including all such costs and expenses incurred with respect to an appeal and such may be included in the judgment entered in such action.

## **21. Officials, Agents and Employees Not Personally Liable.**

In no event shall any official, officer, employee or agent of the State be in any way personally liable or responsible for any covenant or obligation contained in this Lease, express or implied, nor for any statement, representation or warranty made in connection herewith.

## **22. Miscellaneous.**

A. Modification. The terms and conditions of this Lease may be modified only by the prior written consent of the authorized representatives of the Lessor and Lessee.

B. Complete Statement of Terms. No other understanding, whether oral or written, whether made prior to or contemporaneously with this Lease, shall be deemed to enlarge, limit, or otherwise affect the operation of this Lease.

C. Lessee's Non-Discrimination. Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.

D. Paragraph Headings. The paragraph headings, titles, and captions used in this Lease are not to be construed as interpretations, but are inserted for convenience and reference only.

E. Entire Agreement. This Lease (including the Summary of Lease Provisions, Lease Provisions, Signature Pages and all Attachments) contain the entire agreement between the parties as of the Commencement Date concerning the subject matter hereof, and supersedes all prior or contemporaneous agreements, whether written or oral.

F. Governing Law and Forum. This Lease shall be construed in accordance with, and governed by, the laws of the State of Idaho; and, the parties consent to the jurisdiction of Idaho State Courts located in Twin Falls County in the event of any dispute with respect to this Lease.

G. Binding on Heirs and Successors. It is understood and agreed that all terms, covenants, and conditions hereof shall be binding upon the approved subleases, approved assignees, and upon Lessee's heirs or successors-in-interest.

H. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by a court of appropriate jurisdiction, for any reason whatsoever, then the validity, legality and enforceability of the remaining provisions shall not in any way be adversely affected or impaired.

I. Licenses, Permits and Authorizations. Lessee shall be responsible for obtaining and paying any and all costs or fees for any license, permit or authorization that may be required from any applicable entity or governmental body which may be required by any applicable federal, state or local governmental law, rule, regulation or ordinance, or as required in the course of doing business or as related to the use and purpose of this Lease.





## ATTACHMENT A – SPECIAL TERMS AND CONDITIONS

The following terms and conditions are applicable to any and all activities of Lessee on the Leased Premises.

1. Lessee has represented that it will require a paved runway starting from the most southerly terminus of the leased premises running north to the existing site of the ramp in order to launch the jump vehicle over the Snake River Canyon. Lessee will also require a parking area on-site for broadcasters and launch crew. Lessor plans to convert the leased premises into a public park/trailhead for the Canyon Rim Trail following rehabilitation of the leased premises after termination of this Lease. In addition to all other requirements of this Lease, Lessee shall develop the leased site as follows:

- a. The paved roadway beginning at the most southerly terminus and running north to the ramp shall be designed and developed, at a minimum, pursuant to the City's standard drawings required for the development of public streets with fifty feet (50') of right of way.
  - b. Lessee shall design and develop a paved parking lot, including curb, gutter and sidewalk, at the northerly end of the roadway described above, on the east side of the roadway, with \_\_\_ parking spaces, in conformance with the City's standard drawing required for the development of public parking lots.
  - c. Lessee shall design and develop a paved \_\_\_\_\_ foot (\_\_\_') wide bike/pedestrian pathway from the westerly terminus of the existing Canyon Rim Trail, westerly across the entire canyon rim to the westerly boundary of the leased premises, and from the southerly terminus of the leased premises, north along the east side of the roadway described above, connecting to the Canyon Rim Trail.
  - d. Lessee shall construct fencing, as designated by the Lessor, along both the easterly and westerly boundaries of the leased premises, and along such portions of the canyon rim as designated by the Lessor.
  - e. The design of the improvements described above must be submitted to the Lessor for approval in writing prior to construction. Lessor shall have the right to inspect and conduct testing during any/all phases of the development.
2. Use of the leased premises shall be restricted to the Lessee and its contractors. The Lessee shall not sell tickets for admission onto the leased premises, or otherwise permit the public on the leased premises, for any reason whatsoever, including to view the Event.
3. In promoting the event contemplated in this Lease, Lessee agrees that Lessor is neither participating in nor sponsoring the event. Lessee shall never represent to the public or otherwise that the Lessee is participating in or sponsoring the event, nor use the Lessee's logo in any advertising or promotion.

4. Portable toilets and trash cans on site during the event.
5. Lessee shall reimburse the Lessor for staff time expended in the preparation and administration of this Lease Agreement. The term “staff time” means the fully burdened cost to the Lessee, including all benefits, taxes, etc. Lessee agrees to bill Lessor for this staff time on a regular basis. Lessee agrees to pay each bill within fifteen (15) days of the billing date.
6. Upon approval of the Lessee’s plan as provided for in Phase 1, Lessee shall prepare a good faith estimate of the additional law enforcement costs to be incurred by Lessee as a result of the Event. Lessee shall deposit with Lessor the full amount of this estimate within fifteen (15) days of receipt of said good faith estimate. Lessor shall document all actual costs of additional law enforcement related to the Event. If Lessor’s actual additional law enforcement costs are less than the estimated costs, Lessor shall return the difference between the deposit and the actual cost, within fifteen (15) days of making a final accounting. If the Lessor’s actual additional law enforcement costs are more than the estimated costs, Lessee shall pay Lessee the difference between the estimated costs and the actual costs within fifteen (15) days of receipt billing from Lessor.
7. Other special terms and conditions.

## ATTACHMENT B – LEGAL DESCRIPTION

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### EXHIBIT A

#### LEGAL DESCRIPTION (North Portion) [#1]

A parcel of land located in Government Lots 8 and 9 of Section 35, Township 9 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, and more particularly described as follows:

Commencing at a found brass cap monumenting the Southeast Corner of said Section 35 from which a brass cap monumenting a Meander Corner common to Sections 35 and 36 bears North 00°00'28" East, 2498.84 feet;

THENCE North 89°52'20" West along the south boundary of said Government Lot 9 for a distance of 329.11 feet;

THENCE North 05°25'12" West (Deed Bearing - North 05°25'00" West) for a distance of 180.78 feet to the POINT OF BEGINNING;

THENCE North 05°25'12" West (Deed Bearing - North 05°25'00" West) for a distance of 1,515.01 feet to a found 1/2 inch rebar & cap (LS-889);

THENCE North 24°25'07" West (Deed Bearing - North 24°28'30" West) for a distance of 400.01 feet (Deed Distance - 400.16 feet) to a point on the southerly rim of the Snake River Canyon;

THENCE along the southerly rim of the Snake River Canyon on the following courses:

North 69°34'21" East for a distance of 49.16 feet;

South 80°30'23" East for a distance of 88.97 feet;

South 78°40'51" East for a distance of 186.33 feet;

North 70°32'10" East for a distance of 70.90 feet;

North 83°31'21" East for a distance of 89.67 feet;

North 85°14'10" East for a distance of 47.14 feet;

North 82°38'18" East for a distance of 52.05 feet;

North 88°06'30" East for a distance of 68.42 feet;

South 55°32'00" East (Deed Bearing - South 55°57'42" East) for a distance of 18.76 feet (Deed Distance - 18.98 feet) to a found 5/8 rebar;

THENCE South 00°00'28" West (Deed Bearing - South 00°00'55" West) leaving the southerly rim of the Snake River Canyon and along the easterly boundary of said Section 35 for a distance of 49.31 feet;

THENCE North 88°56'21" West for a distance of 131.74 feet;

THENCE South 82°17'21" West for a distance of 100.43 feet;

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THENCE South 76°18'42" West for a distance of 150.14 feet;  
THENCE South 08°30'09" West for a distance of 212.68 feet;  
THENCE South 13°39'08" West for a distance of 111.05 feet;  
THENCE South 05°25'12" East for a distance of 108.18 feet;  
THENCE North 82°43'22" East for a distance of 132.00 feet;  
THENCE South 00°00'00" East for a distance of 371.43 feet;  
THENCE South 83°07'10" West for a distance of 96.88 feet;  
THENCE South 05°25'12" East for a distance of 990.74 feet;  
THENCE North 89°53'01" West for a distance of 50.23 feet to the POINT  
OF BEGINNING.

Said parcel contains 4.68 acres, more or less.

Record bearings and distances reference Instrument Numbers 2007-019907  
and 2007-19908 Twin Falls County Records.

**EXHIBIT B**

**LEGAL DESCRIPTION (South Portion) [#2]**

A parcel of land located in part of Government Lot 9 of Section 35, Township 9 South, Range 17 East and part of Government Lot 1 and the Southeast Quarter of the Northeast Quarter of Section 2, Township 10 South, Range 17 East, Boise Meridian, Twin Falls County, Idaho, and more particularly described as follows:

Commencing at a found 5/8 inch rebar monumenting the East Quarter Corner of said Section 2 from which a brass cap monumenting the Northeast corner of said Section 2, bears North 00°10'40" East, 2671.65 feet;

THENCE North 00°10'40" East along the easterly boundary of said Section 2 for a distance of 1,301.68 feet;

THENCE North 89°49'20" West for a distance of 25.00 feet to a point on the westerly prescriptive easement line of Hankins Road and being the POINT OF BEGINNING;

THENCE North 89°49'20" West for a distance of 14.00 feet to a point on a nontangential curve left;

THENCE northwesterly 47.43 feet along a curve to the left having a radius of 30.00 feet, delta angle of 90°34'51", and a long chord bearing North 45°06'46" West for a distance of 42.64 feet;

THENCE South 89°35'49" West for a distance of 111.46 feet;

THENCE North 12°29'43" West (Deed Bearing - North 12°27'14" West) for a distance of 136.86 feet to a found 1/2 inch rebar and cap (LS-889);

THENCE North 05°25'12" West (Deed Bearing - North 05°25'00" West) for a distance of 1,393.85 feet;

THENCE South 89°53'01" East for a distance of 50.23 feet;

THENCE South 05°25'12" East for a distance of 1,385.92 feet;

THENCE South 12°29'43" East for a distance of 64.71 feet;

THENCE North 89°35'49" East for a distance of 122.13 feet to a point on the westerly prescriptive easement line of Hankins Road;

THENCE South 00°10'40" West along the westerly prescriptive easement line of Hankins Road for a distance of 108.45 feet to the POINT OF BEGINNING.

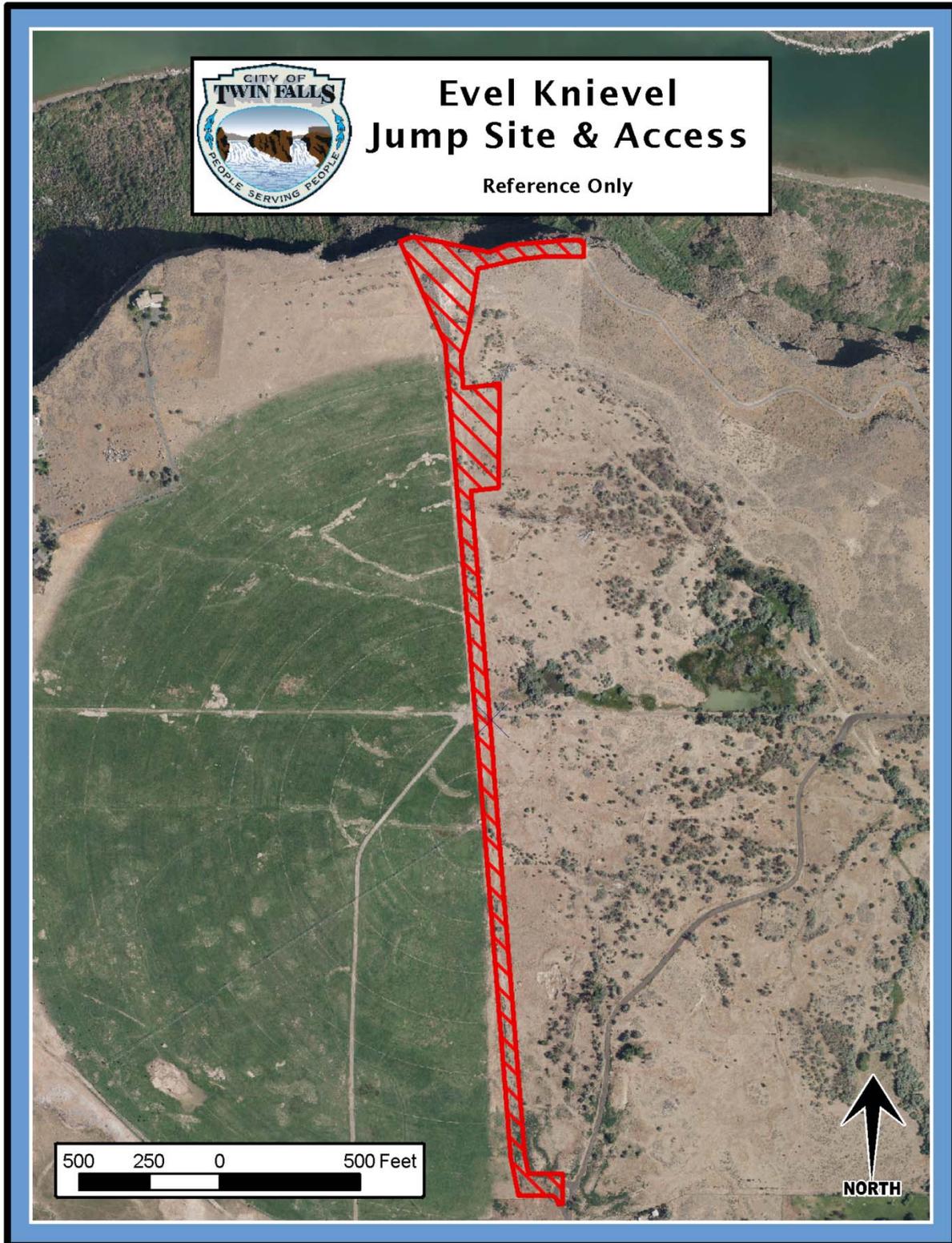
Said parcel contains 1.97 acres, more or less.

Record bearings and distances reference Instrument Number 2007-019907 Twin Falls County Records.

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ATTACHEMENT C – AERIAL MAP



**ATTACHMENT D -**

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