

COUNCIL MEMBERS:

Suzanne Hawkins	Jim Munn	Shawn Barigar	Chris Talkington	Gregory Lanting	Don Hall	Rebecca Mills Sojka
Vice Mayor					Mayor	



AGENDA

Meeting of the Twin Falls City Council
Monday, October 12, 2015
City Council Chambers
5:00 P.M. - 305 3rd Avenue East -Twin Falls, Idaho

PLEDGE OF ALLEGIANCE TO THE FLAG CONFIRMATION OF QUORUM CONSIDERATION OF THE AMENDMENTS TO THE AGENDA PROCLAMATIONS: None		
GENERAL PUBLIC INPUT		
5:00 - AGENDA ITEMS		
I. <u>CONSENT CALENDAR:</u>	<u>Purpose:</u>	<u>By:</u>
1. Request to approve the Accounts Payable for October 6 – 12, 2015.	Action	Sharon Bryan
II. <u>ITEMS FOR CONSIDERATION:</u>	<u>Purpose:</u>	<u>By:</u>
1. Consideration and approval to negotiate a contract with C.R. Peterson Consulting, LLC to develop a Transit Development Plan for the City of Twin Falls.	Action	Mandi Thompson/ Mitchel Humble
2. Consideration and approval of an agreement for waste water services between the City of Twin Falls, the Twin Falls Urban Renewal Agency and Chobani Idaho, LLC, with an effective date of September 1, 2015.	Action	Travis Rothweiler
3. Public input and/or items from the City Manager and City Council.		
III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u>		
IV. <u>PUBLIC HEARINGS:</u> 6:00 P.M. - None		
V. <u>ADJOURNMENT:</u>		
1. Executive Session § 74-206(1): (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student.		

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.

Twin Falls City Council-Public Hearing Procedures for Zoning Requests

1. Prior to opening the first Public Hearing of the session, the Mayor shall review the public hearing procedures.
 2. Individuals wishing to testify or speak before the City Council shall wait to be recognized by the Mayor, approach the microphone/podium, state their name and address, then proceed with their comments. Following their statements, they shall write their name and address on the record sheet(s) provided by the City Clerk. The City Clerk shall make an audio recording of the Public Hearing.
 3. The Applicant, or the spokesperson for the Applicant, will make a presentation on the application/request (request). No changes to the request may be made by the applicant after the publication of the Notice of Public Hearing. The presentation should include the following:
 - A complete explanation and description of the request.
 - Why the request is being made.
 - Location of the Property.
 - Impacts on the surrounding properties and efforts to mitigate those impacts.Applicant is limited to 15 minutes, unless a written request for additional time is received, at least 72 hours prior to the hearing, and granted by the Mayor.
 4. A City Staff Report shall summarize the application and history of the request.
 - The City Council may ask questions of staff or the applicant pertaining to the request.
 5. The general public will then be given the opportunity to provide their testimony regarding the request. The Mayor may limit public testimony to no less than two minutes per person.
 - Five or more individuals, having received personal public notice of the application under consideration, may select by written petition, a spokesperson. The written petition must be received at least 72 hours prior to the hearing and must be granted by the mayor. The spokesperson shall be limited to 15 minutes.
 - Written comments, including e-mail, shall be either read into the record or displayed to the public on the overhead projector.
 - Following the Public Testimony, the applicant is permitted five (5) minutes to respond to Public Testimony.
 6. Following the Public Testimony and Applicant's response, the hearing shall continue. The City Council, as recognized by the Mayor, shall be allowed to question the Applicant, Staff or anyone who has testified. The Mayor may again establish time limits.
 7. The Mayor shall close the Public Hearing. The City Council shall deliberate on the request. Deliberations and decisions shall be based upon the information and testimony provided during the Public Hearing. Once the Public Hearing is closed, additional testimony from the staff, applicant or public is not allowed. Legal or procedural questions may be directed to the City Attorney.
- * Any person not conforming to the above rules may be prohibited from speaking. Persons refusing to comply with such prohibitions may be asked to leave the hearing and, thereafter removed from the room by order of the Mayor.



Date: Monday, October 12, 2015
To: Honorable Mayor and City Council
From: Mandi Thompson, Grant Manager

Request:

Consideration of a recommendation from City Staff to negotiate a contract with C.R. Peterson Consulting, LLC to develop a Transit Development Plan for the City of Twin Falls.

Time Estimate:

The staff presentation will take approximately 5 minutes. Following the presentations, we expect some time for questions and answers.

Background:

The City solicited requests for qualifications (RFQ) from qualified consulting firms to provide professional services to the City to develop a Transit Development Plan. Proposals were due on Monday, August 24th, 2015. Staff received two submittals in response to the RFQ.

Mandi Thompson (Grant Manager), Greg Lanting (Transportation Council Liaison), Josh Baird (Staff Engineer), Rene'e V. Carraway-Johnson (Zoning & Development Manager) and Mitch Humble (Deputy City Manager) reviewed the two proposals. This group ranked the two proposals based on criteria outlined in the RFQ. The two firms were C.R. Peterson Consulting, LLC and LSC Transportation Consultants, Inc. All five members of the review committee ranked C.R. Peterson Consulting first. This firm was asked to participate in a Skype interview with the committee members, at which time more detailed questions were asked of the principal, Ross Peterson, and Associate Jeremy Dalton (proposed project manager).

After the interview and some discussion by the group, each person verified their top ranking of C.R. Peterson Consulting based on qualifications and their answers to questions during the interview. Staff recommends the City begin negotiating with this firm to develop a contract and Scope of Work for the Transit Development Plan.

The primary reason the group recommends negotiations with C.R. Peterson is their experience with and understanding of transit development in rural areas. This firm has experience assisting smaller urban and larger rural communities understand public transportation, the requirements of the City, and best practices moving forward.

If approved, staff will start negotiations with C.R. Peterson Consulting, LLC. Should those negotiations fail, staff would begin to negotiations with the number 2 ranked firm, LSC Transportation Consultants, Inc. Staff is confident that negotiations with C.R. Peterson Consulting, LLC. will be successful.

Budget Impact:

None at this time, however when a contract has been negotiated, staff will return to the City Council for consideration a contract for services. A grant from the Idaho Transportation Department in the amount of \$40,000 was awarded to the City of Twin Falls for the commission of a Transit Development Plan. The City will provide a \$10,000 match from contingency.

Regulatory Impact:

None.

Conclusion:

City Staff recommends that the City Council direct staff to begin negotiations with C.R. Peterson Consulting, LLC to develop a contract and bring said contract back to City Council for their consideration.

Attachments:

1. Published Request for Qualifications



City of Twin Falls Transit Development Plan

Request for Qualifications

Mandi Thompson

8/6/2015

This City of Twin Falls is requesting qualifications (RFQ) from all interested persons and/or firms for professional consulting services for the development of a Transit Development Plan.

ADVERTISEMENT FOR REQUEST FOR QUALIFICATIONS
City of Twin Falls Transit Development Plan

The City of Twin Falls (City) is seeking qualified and experienced professionals (Engineers, consultants, planners, etc.) to submit Statements of Qualifications to provide professional planning services for the creation of a Transit Development Plan for the City of Twin Falls.

Sealed proposals will be received in the City of Twin Falls, City Hall – Mandi Thompson at:

321 Second Avenue East
P.O. Box 1907
Twin Falls, Idaho 83301
(208) 735-7237

until 3:00 p.m. local prevailing time on August 24, 2015.

The criteria and procedures to be used for selection of qualified persons or firms to perform such services may be obtained at the City of Twin Falls, City Hall, from Mandi Thompson, as listed above. The City reserves the right to accept or reject any or all qualification statements.

This Notice is being published in compliance with Idaho Code Section 67-2320(2)(g).

Dated this 6th day of August 2015.

Mandi Thompson
Grant Manager

Publish: August 6th and 13th, 2015
Open: August 6, 2015



City of Twin Falls

Request for Qualifications

Transit Development Plan

August 2015

The City of Twin Falls, Idaho in accordance with Idaho Code 67-2320, is soliciting “Requests for Qualifications” (RFQ) from engineers and consultants to provide professional planning services to the City.

PROJECT INFORMATION

The successful firm or individual selected through the City’s effort by this Request for Qualification (RFQ) will provide planning services for a Transit Development Plan. The project will assist in formulating goals and objectives for a public transit system, review and assess current transit options, identify unmet transit needs, identify future capital and operating costs, and develop an appropriate course of action to address the objectives in both the short-range and long-range future.

The City anticipates that the selected consulting firm or individual will provide a full knowledge of transportation needs and services in communities demographically similar to Twin Falls, Idaho. It is envisioned that the successful firm or individual will assist and guide the City in the planning of a future public transportation system.

The final product (Transit Development Plan) must be designed to assist the City of Twin Falls in implementing a public transportation system in the future. The successful firm or individual will be required to review the existing services in the area through data collection and public and stakeholder input. Public participation must be an integral part of any proposal, and shall be managed by the selected firm or individual.

PURPOSE OF PROCEDURE

The City’s “Qualification Based Selection” (QBS) is to comply with Idaho Code 67-2320. This procedure provides for an orderly process of:

- (1) Solicitation of professional qualifications,
- (2) Evaluation and ranking of qualifications,
- (3) Establishment of a ranked list of service providers, and
- (4) Negotiation of scope of services and fees.

TIMELINE:

RFQ Notice Publication	Thursday, August 6, 2015
RFQ Availability and Response Period	Thursday, August 6 – Monday, August 24, 2015
RFQ Response Due	Monday, August 24, 2015 by 3 p.m.*
Evaluation and Ranking	August 25 – 28, 2015
Interview Notice	Monday, August 31, 2015
Interviews Scheduled	Wednesday, September 9, 2015
Consultant Selected	Friday, September 11, 2015

* *Local Prevailing Time.*

PROPOSAL FORMAT CONTENT

At a minimum, proposals must include the following information in the sequence listed. Proposing firm to submit technical information to meet the requirements stated below. **Proposals need not be exhaustive in the information presented**, rather, the proposing firm is encouraged to present only concise information relevant to your pertinent qualifications.

1.0 General Information and Company Profile – 5 page maximum

In this section, please provide an introductory statement of yourself and/or firm. Be sure to describe your history, size, resources, philosophy of service, volume of current work, and management techniques and methods along with any other information that would be helpful to characterize the firm.

2.0 Approach To Project and Team Organization – 5 page maximum

Describe your approach to providing the required services indicated in the “Project Information” section of this RFQ. Discuss how you provide leadership to facilitate teamwork and communication among all parties. Provide a professional resume for the Project Manager who will be assigned to this project. Provide a brief description of your consultant firms’ experience in transportation planning. Describe the proposed roles and responsibilities of key personnel for the project.

3.0 Past Performance – 5 page maximum

Briefly describe other projects executed by you or your firm that demonstrate relevant experience. Extensive descriptions of vaguely related projects are discouraged. For each project listed, include the name, address, and phone number of a person who may be contacted regarding your performance on the project. Projects listed for which your firm worked in an associated capacity or in a teaming venture with another firm should include the name, address, and phone number of a contact person for the associated firm along with a description of what services and responsibility that firm provided on the project.

4.0 Specific Information - 5 page maximum

Briefly respond to each of the following items:

Describe your experience in facilitating the preliminary planning process, including community based meetings and how your approach could be beneficial to the City of Twin Falls process. Indicate the individuals on your team who will lead this process including their roles, responsibilities and techniques.

5.0 Local Knowledge - 5 page maximum

Preference will be given to those firms having local knowledge of and experience working in the community.

6.0 Evaluators Discretionary Rating

Each selection committee member will have discretionary points to rate factors such as specificity, clarity and completeness of proposal, and level of professionalism.

EVALUATION CRITERIA

Submittal will be rated by the following point evaluation method; the total of all evaluators’ points will be used to determine rankings.

		Maximum Value
1.0	General Information and Company Profile	5 Points
2.0	Approach to Project and Team Organization	10 Points
3.0	Past Performance	10 Points
4.0	Specific Information	10 Points
5.0	Firms with Local Construction Knowledge and Experience	10 Points
6.0	<u>Evaluator’s Discretionary Rating</u>	<u>5 Points</u>
	Total	50 Points

SELECTION PROCEDURE

A selection committee composed of City of Twin Falls Council Members and City employees will evaluate all submittals, tabulate the results, and prepare a shortlist of highest ranked respondents for interview by the selection committee. Prior to the interview, the short listed firms will be given a format to be followed during their presentation. The selection committee will make a final selection recommendation to the City Council.

The City will seek to negotiate a contract, a detailed scope of work, fees, schedule, etc. with the firm selected. If unable to reach an agreement, the City has the right to terminate negotiations and commence negotiations with the second most qualified firm/individual.

PROPOSAL SUBMISSION PROCEDURES

1. Written proposals in response to this RFQ will be accepted at the City of Twin Falls, Mandi Thompson, Grant Manager, 321 2nd Avenue East, P.O Box 1907, Twin Falls, Idaho, Phone (208) 735-7237 or mthompson@tfid.org until **3 p.m. Monday, August 24, 2015, local prevailing time.**

2. Submittals shall include six (6) hard copies of the proposal and one electronic copy. Electronic copies can be emailed to Mandi Thompson at mthompson@tfid.org. Proposals must be sealed in an opaque package and clearly marked: Request For Qualifications – Transit Development Plan.
3. Proposals shall be composed of not more 25 numbered pages, bound, single-sided 8 ½" x 11", and printed in at least twelve (12) point font. The cover sheet is not included in the page count.
4. Questions regarding this project may be directed to Mandi Thompson, Grant Manager, 321 2nd Avenue East, P.O Box 1907, Twin Falls, Idaho, Phone (208) 735-7237 or mthompson@tfid.org.

Any explanation desired by a firm must be requested of the City in writing, and if explanation is necessary, a reply will be made in the form of an addendum, a copy of which will be forwarded to each prospective firm that has requested that they it be furnished with a copy of each addendum. In order to receive addenda to the RFQ, the firm must email contact information to mthompson@tfid.org and receive a confirming email that the request has been received. All questions must be emailed to mthompson@tfid.org and received no later than August 17, 2015, at 10:00 a.m. local prevailing time.

5. The City is a Public Agency. All submittals, including bids, proposals, and any other information provided by a consultant may be considered a public record and, except as noted below, will be available for inspection and copying. Any information submitted to the City is subject to release as provided for by Idaho Public Records Law, Idaho Code, Title 9, Chapter 338 through 350.

The City will take reasonable efforts to protect any information marked "confidential", to the extent allowed by Idaho Public Records Law. Confidential information should be clearly identified. It is requested that the confidential information be placed in a separate envelope within the proposal to minimize accidental copying and release. Confidential information will be returned to the applicant upon request, after the award of the Agreement. It is understood, however, that the City will have no liability for disclosure of such information. Any proprietary or otherwise sensitive information contained in or with any proposal is subject to potential disclosure.

Should the Agency be challenged in court by a third party for a decision to withhold or redact information identified as proprietary by the professional or professional firm, by submitting a Qualification Statement in response to this request, the applicant agrees to indemnify, defend, and hold harmless the Agency for any judgments, attorney fees, and/or court costs associated with asserting the documents contain proprietary information. The applicant agrees and acknowledges that the Qualification Statement is a discloseable public record. The Agency reserves the right to make an independent discretionary decision whether or not the documents marked as proprietary contain trade secrets and to disclose the contents thereof pursuant to the Public Records Act. All documents not marked as proprietary are subject to release in compliance with the Public Records Act.

PROPOSAL GUIDELINES

1. The City will not be liable for any costs incurred in the preparation and production of a proposal or any work performed prior to the execution of a contract.
2. All Proposals and other materials will become the property of the City.
3. All Information contained in this RFQ and acceptable provisions of the selected firm's response will be made a part of the executed agreement for services.
4. Upon request, the submitting firm shall provide additional information as requested by the City.
5. The City reserves the right to: Waive any informalities or irregularities and reject any or all proposals received as a result of this RFQ; select all or part of the respondent's proposal; negotiate changes in the scope of work or services to be provided; conduct investigations required to determine the submitting firm's performance record and ability to perform the assignments specified as a part of this RFQ; negotiate separately with any source in a manner deemed to be in the best interests of the City.

GENERAL PROFESSIONAL SERVICES QUALIFICATION STATEMENT

General Information:

Firm Name _____

Address _____

City, State, Zip _____

Telephone _____ Fax _____ E-mail _____

Principal-In-Charge _____ Idaho License _____

Legal status of your company: Corporation Partnership Individual Joint Venture

Questions:

What types of licenses in accordance with Idaho Code 67-2320 exist within your firm: _____

Does your firm carry errors and omissions insurance? Yes No

What is the amount of your errors and omissions insurance liability limits? _____

What is the amount of your errors and omissions insurance deductible? _____

If yes to any of the following questions, please attach a separate sheet of explanation.

Does your firm have any conflict of interests regarding any City work? Yes No

Has your firm failed to complete a professional service contract? Yes No

Has your firm been involved in bankruptcy, litigation or arbitration proceedings? Yes No

Contact Regarding this Submittal (Principal, Partner, or Corporate Officer)

Name _____ Dated _____

Phone _____ Fax _____

Title _____

Signature _____



Monday October 12, 2015
To: City Council
From: Travis Rothweiler, City Manager

Request:

Consideration and approval of an agreement for waste water services between the City of Twin Falls, the Twin Falls Urban Renewal Agency and Chobani Idaho, LLC, with an effective date of September 1, 2015.

Time Estimate:

The staff presentation will take approximately 10 minutes, plus time to answer questions and answers.

Background:

On November 3, 2011, the City of Twin Falls, Twin Falls URA and Chobani (formally known as Agro-Farma, LLC), entered into a Development Agreement that allowed for the construction of the yogurt facility, which spans nearly 1 million square feet, employs over 800 Magic Valley residents, and has a total taxable value of approximately \$400 million.

The positive impact Chobani has had on Twin Falls cannot be overstated. The estimated overall annual impact that Chobani has on our local economy more than likely exceeds \$1.3 billion annually. For every direct job that has been created by Chobani, an additional 3.5 to 6 indirect jobs have been created and/or sustained in our local economy.

As a part of the initial Development Agreement, the City, the URA and Chobani constructed a new pretreatment facility with a discharge capacity of 800,000 gallons per day (GPD) with a one MGD maximum capacity to pretreat Chobani's wastewater flows prior to entering into the City's collection system. The City of Twin Falls used a \$2.75 million of its reserves from the capital fund to fund its share of the pretreatment facility.

As stated in the initial Development Agreement and reiterated in Section 2.2 of this Agreement, Chobani agreed to repay the City the amount it provided toward the initial improvements to the pretreatment facility over time. The amount that was repaid was based on an agreed to amount for each 1,000 gallons of waste water flow that entered into the City's collection and treatment systems. This amount to be repaid was a part of the flat rate for wastewater discharge of \$2.84/1,000 gallons of flow. The balance of the initial pretreatment facility costs was paid for with the initial development bonds and tax increment (property taxes) captured from Chobani's investment.

After reviewing the current tax increment financing available, it was determined that there was more than sufficient TIF funds current available to repay the initial improvements cost in full. As provided for in this Agreement, the Twin Falls URA will provide the City \$2.75 million of TIF to repay the City's share of the initial improvements cost in full. The City will reimburse Chobani the amount that it has contributed toward repayment as of the effective date of September 1st in the amount of \$353,445.

The September 1st billing date aligns with our billing process. Because the city bills all of its industrial users based on the actual flows and loadings sent from their respective facilities to the billing process usually lags about 45 days from the billing period.

As a part of the Agreement, the flat rate will no longer be in effect and Chobani will pay the City's standard industrial rate as provided for the City's recently adopted utility rate Resolution.

Because the pretreatment facility is an important part of their production process and as stated in this Agreement, Chobani will operate the pretreatment facility for as long as it is needed. Additionally, Chobani will maintain the facility and preform all capital replacement of all equipment.

Chobani will purchase and maintain property insurance for the PTF on a replacement cost basis and shall purchase and maintain a commercial general liability insurance policy on a broad form basis with bodily injury and property damage combined single limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate. City and URA shall be additional insureds on such policy.

Budget Impact:

The impacts of the Agreement are referenced in the section above. In short, there is no negative fiscal impact associated with the Agreement.

Regulatory Impact:

There is no regulatory impact associated with approval of the Agreement and does not alter or change the existing WWTP Discharge agreements.

Conclusion:

Staff recommends that the City Council approved the Agreement for the reasons states above. This Agreement has been reviewed by Twin Falls City Attorney Fritz Wonderlich.

Attachments:

1. Agreement between the City of Twin Falls, the Twin Falls URA and

WASTEWATER DISCHARGE AGREEMENT

THIS WASTEWATER DISCHARGE AGREEMENT (“Agreement”) is effective the 1st day of September, 2015 (“Effective Date”) and entered into by and among the City of Twin Falls, an Idaho municipal corporation (“City”); the Urban Renewal Agency of the City of Twin Falls, an independent public body corporate and politic of the State of Idaho (“URA”); and Chobani Idaho, LLC, formerly known as Chobani Idaho, Inc. and Agro-Farma Idaho, Inc., Idaho corporations (“Chobani”).

Recitals

A. The parties entered into that certain Development Agreement dated November 3, 2011, and that certain Development Agreement—First Amendment, dated January 14, 2013 (collectively, “Development Agreement”), setting forth the obligations of the parties related to the development of a dairy manufacturing plant, wastewater pre-treatment facility and related improvements at approximately Kimberly Road and 3300 East Road in Twin Falls, Idaho (“Project”).

B. Pursuant to the Development Agreement, City and URA agreed to provide and reserve one million five hundred thousand gallons per day (1.5 MGD) of discharge capacity for the Project in City’s Publicly Operated Treatment Works facility (“POTW”) and in a sewer trunk line connecting the Project to the POTW. City and URA have completed improvements to the POTW to accommodate this discharge capacity. City and URA have completed construction of a sewer trunk line to accommodate this discharge capacity, except for those portions (i) along Pole Line Avenue East, from the Project site to Canyon Springs grade, which may be expanded to 1.5 MGD and paid with tax increment funds available to the Project at such time as Chobani requests, contingent upon the availability of sufficient tax increment funds, and (ii) approximately 800’ in length near the top of Canyon Springs grade, which the City will complete in 2015.

C. Pursuant to the Development Agreement, City and URA have constructed a new pretreatment facility (“PTF”) with a discharge capacity of eight hundred thousand gallons per day average (800,000 GPD) and one million gallons per day maximum (1 MGD) to pre-treat wastewater from the Project. The PTF currently includes an equalization/pH neutralization system, a dissolved air flotation system (“DAF”), an up-flow anaerobic sludge blanket system (“UASB”) and a wastewater heating system, along with chemical feed systems, pumps, piping, valves, electrical/control systems, and other appurtenances within the PTF facility and the buildings that house the equipment.

D. City issued Industrial Wastewater Discharge Permit No. S0007R, dated October 22, 2012 (“Discharge Permit”), authorizing Chobani to discharge pretreated wastewater to the POTW.

E. In an Agreement between City and Chobani, dated April 12, 2013 (“2013 Discharge Agreement”), the parties agreed on a new point of compliance and wastewater fees to be paid during startup of the PTF. The 2013 Discharge Agreement also acknowledged the parties’ agreement for Chobani to operate the PTF.

F. The parties desire to enter into this Agreement to update and more fully address the terms of Chobani's operation of the PTF, to change the rate paid for wastewater discharge services provided by City, and other wastewater discharge terms.

NOW, THEREFORE, in consideration of the recitals above, hereby incorporated as terms of this Agreement, and subject to the following terms and conditions, the parties agree as follows:

1. Operation of the PTF

1.1. Operation of PTF. At its own cost, Chobani shall provide for the operation, maintenance and capital replacement of all equipment within the PTF. Chobani may make any operational changes, repairs and improvements to the PTF it determines are necessary to comply with the Discharge Permit, as amended. At its own cost, Chobani shall provide for the transport and disposal of all DAF sludge.

1.2. Insurance.

1.2.1. Chobani shall purchase and maintain property insurance for the PTF on a replacement cost basis. Such policy shall be an "all-risk" or equivalent policy form insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft (subject to related party exclusions), vandalism and malicious mischief. Such policy may be subject to customary or commercially reasonable deductibles, exclusions and limitations. Chobani, City and URA waive all rights against each other and any of their contractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this subsection. Chobani shall be solely responsible for payment of any deductibles associated with such insurance.

1.2.2. Chobani shall purchase and maintain a commercial general liability insurance policy on a broad form basis with bodily injury and property damage combined single limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate. City and URA shall be additional insureds on such policy.

1.2.3. Certificates of insurance for each required policy of insurance shall be filed with City and URA promptly after the Effective Date and thereafter upon renewal or replacement of each required policy of insurance.

1.3. Indemnity. To the fullest extent permitted by applicable law, Chobani shall indemnify, defend and hold City and URA harmless from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from Chobani's operation and maintenance of the PTF, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the PTF itself, to the extent covered by insurance), but only to the extent caused by the negligent acts or omissions of Chobani, its contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

1.4. Term of Operation. Chobani may discontinue operation of the PTF at such time as such operation is no longer necessary to serve the dairy manufacturing facility and to meet the

Discharge Permit. Chobani shall provide written notice to City and URA of such discontinued operation, and Chobani's obligations under Section 1.2 (insurance) shall terminate.

2. Discharge Rate and Other Wastewater Terms

2.1. Wastewater services and rate. Chobani shall discharge pretreated wastewater to the POTW and City shall accept such wastewater in accordance with the Discharge Permit. As of the Effective Date, the rate charged by City to Chobani for collecting and treating the pretreated wastewater flows shall be in accordance with City's Utility Rate Resolution for Significant Industrial Users.

2.2. Repayment for Initial Improvements to PTF. Pursuant to the Development Agreement, the City funded certain initial improvements to the PTF in the amount of TWO MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000) ("**Initial Improvements Cost**") that would be repaid as part of the flat rate for wastewater discharge. The parties agree that the Initial Improvements Cost is an eligible expense for tax increment funds ("**TIF**") and that sufficient TIF is currently available to repay the Initial Improvements Cost in full. As of the Effective Date, the URA will allocate TWO MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$2,750,000) of TIF to repay the Initial Improvements Cost in full as follows: (i) the total amount Chobani has contributed toward the Initial Improvements Cost through flat rate payments as of the Effective Date (\$353,445.00) will be paid to Chobani, and (ii) the balance of the Initial Improvements Cost (\$2,396,555) will be paid to the City.

2.3. Easement for PTF. Upon execution of this Agreement, the parties shall enter into that certain Easement Agreement in the form attached hereto as Exhibit A, which shall be recorded in the real property records of Twin Falls County, Idaho.

2.4. Option to acquire PTF. Chobani has the option to acquire the PTF from City for no charge by providing written notice to the City by December 15, 2022. If Chobani exercises its option to acquire the PTF, then the parties agree to unconditionally terminate the Easement Agreement and Chobani's obligations under Section 1.2 (insurance) shall terminate.

2.5. Capacity reservation. City shall reserve and at all times have available, at no additional cost to Chobani, sufficient capacity in its POTW and sewer trunk line to accommodate 1.5 MGD from the Project, except in the remaining portions identified in Recital B above, where the capacity available to the Project shall be 1 MGD until the sewer trunk line improvements are completed and 1.5 MGD upon completion.

2.6. Use of tax increment financing funds. Chobani may direct the use of any excess tax increment financing funds from development of the Project for public wastewater facilities as needed, including without limitation, new equipment in the PTF, capital replacement of equipment in the PTF, additional capacity in the POTW and the sewer trunk line for future expansion of the Project, or any other use authorized in the approved Urban Renewal Plan.

3. General

3.1. Entire Agreement; Modification. This Agreement sets forth the entire understanding and agreement of the parties as to the subject matter herein and shall control over

the Development Agreement and the 2013 Discharge Agreement, in the event of any conflict. No amendment or modification to any terms or provisions of this Agreement, waiver of any covenant, obligation, breach or default under this Agreement or termination of this Agreement (other than as expressly provided in this Agreement), shall be valid unless in writing and executed and delivered by each of the parties. Nothing herein shall affect the authority of the City to modify the terms of the industrial user permit.

3.2. Severability. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected term or provision at any other time or in any other jurisdiction the invalid or unenforceable provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid term or provision.

3.3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and permitted assigns.

3.4. Third Party Beneficiaries. This Agreement shall not confer any rights or remedies on any person other than the parties and their respective successors and permitted assigns.

3.5. Governing Law. This Agreement shall be governed by the laws by the State of Idaho.

3.6. Attorneys' Fees. Except as otherwise provided herein, should any party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the non-prevailing party shall pay to the prevailing party all reasonable costs, damages and expenses, including attorneys' fees, expended or incurred in connection therewith.

3.7. Notices. Formal notices, demands, and communications between the parties shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or faxed or emailed to the principal offices of the parties as set forth below. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate in writing.

If to City: Mayor
City of Twin Falls
PO Box 1907
321 2nd Avenue East
Twin Falls, Idaho 83303-1907
Facsimile No.: (208) 736-2296
Email: dhall@tffd.org

With a copy to: City Manager
City of Twin Falls
PO Box 1907
321 2nd Avenue East
Twin Falls, Idaho 83303-1907

Facsimile No.: (208) 736-2296
Email: trothweiler@tfid.org

Fritz Wonderlich, City Attorney
Wonderlich & Wakefield
P.O. Box 1812
321 2nd Avenue East
Twin Falls, ID 83303-1812
Facsimile No.: (888) 789-0935
Email: fwonderlich@tfid.org

If to URA: Melinda Anderson, Director
City of Twin Falls
PO Box 1907
321 2nd Avenue East
Twin Falls, Idaho 83303-1907
Facsimile No.: (208) 736-2296
Email: manderson@tfid.org

If to Chobani: David Sheldon
Chobani Idaho, LLC
147 State Highway 320
Norwich, NY 13815
Facsimile No.: (607) 847-7489
Email: dave.sheldon@chobani.com

With a copy to: Office of General Counsel
Chobani, LLC
147 State Highway 320
Norwich, NY 13815
Facsimile No.: (607) 847-8847
Email: cathy.king@chobani.com

L. Edward Miller; Deborah E. Nelson
Givens Pursley LLP
PO Box 2720
601 W. Bannock Street
Boise, ID 83702
Facsimile No.: (208) 388-1300
Email: edmiller@givenspursley.com; den@givenspursley.com

3.8. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY: THE CITY OF TWIN FALLS

By: _____
Don Hall, Mayor

URA: URBAN RENEWAL AGENCY OF THE CITY OF TWIN FALLS

By: _____
Dan Brizee, Chair

CHOBANI: CHOBANI IDAHO, LLC

By: _____
Its: _____

EXHIBIT A

Easement Agreement (form)

When recorded return to:
L. Edward Miller
GIVENS PURSLEY LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701-2720

EASEMENT AGREEMENT

This Easement Agreement (“Agreement”) is made effective this ___ day of _____, _____, by Chobani Idaho, LLC, an Idaho limited liability company formerly known as Agro-Farma Idaho, Inc. (“Grantor”), and the City of Twin Falls, an Idaho municipal corporation whose address is 321 2nd Avenue East, Twin Falls, Idaho 83303 (“Grantee”). Grantor and Grantee may be individually referred to herein as a “Party” or collectively as the “Parties”, as appropriate under the circumstances.

RECITALS

A. Pursuant to that certain Development Agreement dated November 3, 2011, as amended, Grantee and the Twin Falls Urban Renewal Agency have constructed on that portion of Grantor’s real property legally described in Exhibit A attached hereto and incorporated herein (the “Easement Premises”), a new wastewater pre-treatment facility that includes an equalization/pH neutralization system, a dissolved air flotation system, a wastewater heating system, an upflow anaerobic sludge blanket system, along with chemical feed systems, pumps, piping, valves, electrical/control systems, and certain other appurtenances within the pre-treatment facility and the buildings that house the foregoing equipment (collectively, the “PTF”).

B. Grantor desires to grant a perpetual, non-exclusive access easement for the benefit of Grantee on and over the Easement Premises in order to provide Grantee access to the PTF.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

GRANT OF EASEMENT. Grantor hereby grants and conveys to Grantee a perpetual, non-exclusive easement on and over the Easement Premises (the “Easement”), subject to the terms of this Agreement.

1. **PURPOSE AND USE OF EASEMENT.** The Easement Premises may be used by Grantee and its employees and contractors for the purpose of accessing and inspecting operations at the PTF after checking in with security and before entering the premises. Grantee shall be admitted immediately and without delay.

2. **GRANTOR'S RIGHTS.** Grantor reserves the right to make any use of the Easement Premises or place improvements thereon that will not materially interfere with any easement rights granted by this Agreement. Grantee acknowledges and agrees that Grantor may construct fences or gates in and around the Easement Premises, provided that Grantor provides Grantee with a key to such fences or gates. Grantor will not grant any other easements within the easement area without the prior written approval of Grantee, which approval shall not be unreasonably withheld or delayed.. The Easement is and shall be expressly subject to any easements and rights-of-way already existing on, over, and under the Easement Premises and Grantor reserves and retains the right to convey other rights-of-way and easements on, over, and under the Easement Premises to such other persons or entities as Grantor may deem proper, so long as such easements and rights-of-way do not materially interfere with Grantee's right of access hereunder.

3. **RIGHT TO RELOCATE.** Grantor reserves the right to, and Grantee agrees that, the Easement Premises may be modified in shape or size and/or relocated at Grantor's sole cost and expense, subject to Grantee's approval, such approval not to be unreasonably withheld or delayed.

4. **PUBLIC DEDICATION.** Nothing herein shall be deemed to be a grant or dedication of any portion of the Easement Premises to the general public, it being the intention of the Parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

5. **TERMINATION.** The rights, title, privileges and authority hereby granted in this Agreement shall continue in full force until the earlier of (i) Grantor purchasing the PTF or (ii) the PTF is no longer in operation. In such event, the Easement shall automatically terminate and the Parties agree to execute and record all documentation reasonably necessary to vacate the Easement and confirm the termination of this Agreement.

6. **GENERAL TERMS AND CONDITIONS.**

6.1. Amendment. This Agreement may not be amended, modified, supplemented, or otherwise changed except by a writing signed by all of the Parties hereto.

6.2. Attorneys' Fees. In the event of any controversy, claim or action being filed or instituted between the Parties to interpret or enforce the terms and conditions of this Agreement, or arising from the breach of any provision hereof, the prevailing Party will be entitled to receive from the other Party all costs, damages, and expenses, including reasonable attorneys' fees through all levels of action, incurred by the prevailing Party.

6.3. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument. This Agreement

may be signed and delivered by facsimile or via email in PDF or other similar format, each of which shall be effective as an original.

6.4. Governing Law, Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Idaho.

6.5. Incorporation by Reference. All recitals and exhibits to this Agreement are hereby incorporated by reference as if set forth herein.

6.6. Merger. As to the subject matter contained herein, this Agreement shall be the complete, entire, final and exclusive agreement among the Parties hereto and supersedes all prior and contemporaneous negotiations, agreements, and understandings, written or oral, between the Parties. It is expressly warranted by the Parties that no promise or inducement has been offered except as set forth herein, and that this Agreement is executed without reliance upon any promise, inducement, or representation not set forth herein. The terms of this Agreement may not be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence whatsoever may be introduced to vary its terms in any mediation, arbitration, or judicial proceeding involving this Agreement.

6.7. Notices. Formal notices, demands, and communications between the parties shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or faxed or emailed to the principal offices of the parties as set forth below. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate in writing.

If to Grantee:

Mayor
City of Twin Falls
PO Box 1907
321 2nd Avenue East
Twin Falls, Idaho 83303-1907
Facsimile No.: (208) 736-2296
Email: dhall@tfid.org

With a copy to:

City Manager
City of Twin Falls
PO Box 1907
321 2nd Avenue East
Twin Falls, Idaho 83303-1907
Facsimile No.: (208) 736-2296
Email: trothweiler@tfid.org

Fritz Wonderlich, City Attorney
Wonderlich & Wakefield
P.O. Box 1812
321 2nd Avenue East
Twin Falls, ID 83303-1812
Facsimile No.: (888) 789-0935
Email: fwonderlich@tfid.org

If to Grantor: Director, Environmental Health & Safety
Chobani Idaho, LLC
147 State Highway 320
Norwich, NY 13815
Facsimile No.: (607) 847-7489
Email: dave.sheldon@chobani.com

With a copy to: Office of General Counsel
Chobani, LLC
147 State Highway 320
Norwich, NY 13815
Facsimile No.: (607) 847-8847
Email: cathy.king@chobani.com

L. Edward Miller
Givens Pursley LLP
PO Box 2720
601 W. Bannock Street
Boise, ID 83702
Facsimile No.: (208) 388-1300
Email: edmiller@givenspursley.com

6.9. Severability. This Agreement will be enforced to the fullest extent permitted by applicable law. If for any reason any provision of this Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision, and (b) such invalidity or unenforceability will not affect any other provision of this Agreement.

6.10. Successors, Binding Effect. All of the easements, covenants, conditions and declarations contained herein shall be a burden on the Easement Premises and shall run with the land and shall benefit and bind the heirs, assigns and successors of the Parties hereto.

6.11. Waiver. No failure or delay on the part of a Party to exercise any of that Party's powers, rights, or privileges under this Agreement shall impair any such powers, rights or privileges, or be construed to be a waiver of any default or breach or any acquiescence therein. To the contrary, except as expressly set forth herein, the waiver any power, right, privilege, breach, default, or remedy must be in writing signed by the Party waiving such power, right, privilege, breach, default, or remedy. No signed waiver of any power, right, privilege, breach, default, or remedy shall constitute a waiver of any subsequent power, right, privilege, breach, default, or remedy.

[Remainder of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first above written.

Grantor: **Chobani Idaho, LLC,**
an Idaho limited liability company

By: _____

Printed Name: _____

Its: _____

State of _____)
) ss.
County of _____)

On this ____ day of _____, _____ before me a Notary Public, personally appeared _____, known or identified to me (or proved to me on the oath of _____) to be a member or the manager of Chobani Idaho, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such 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.

Notary Public for Idaho
Residing at _____
My Commission expires _____

EXHIBIT A
Legal Description of Easement Premises

Land Description
For
Chobani Pre-Treatment Facility

A parcel of land located in a portion of Lots 1, 2, and 3 of Block 1, "Magic Valley Business Park Subdivision No.1" recorded as Instrument No. 2004-002401 in the records of Twin Falls County, Idaho; being more particularly described as follows:

Commencing at the Southwest corner of Lot 1, Block 1, of said subdivision and being the REAL POINT OF BEGINNING. Thence North 00°03'47" West 53.00 feet along the West boundary of said Lot 1 to the REAL POINT OF BEGINNING.

Thence continuing North 00°03'47" West 305.53 feet along the boundary of said Lot 1.

Thence along a curve Right:

Δ - 90°13'10"

R - 30.00'

A - 47.24'

C - 42.51'

LCB - North 45°02'48" East along the boundary of said Lot 1.

Thence South 89°50'37" East 644.88 feet along the North boundary of Lots 1, 2 and 3 of Block 1 of said subdivision.

Thence South 00°09'07" West 335.64 feet.

Thence North 89°50'37" West 673.74 feet to the REAL POINT OF BEGINNING.

Containing approximately 5.19 acres.



