

COUNCIL MEMBERS:

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



AGENDA
 Meeting of the Twin Falls City Council
Monday, June 18, 2012
 City Council Chambers
 305 3rd Avenue East - Twin Falls, Idaho

5:00 P.M.

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

AGENDA ITEMS	Purpose	By:
I. <u>CONSENT CALENDAR:</u> 1. Consideration of a request to approve the accounts payable for June 12 – June 18, 2012. 2. Consideration of a request to approve the June 4, 2012, City Council Minutes. 3. Consideration of a request to approve Liquor, Wine and Beer license renewals for the 2012/2013 year on the condition the applicant receives their State alcohol license.	<u>Action</u>	<u>Staff Report</u> Sharon Bryan L. Sanchez Sharon Bryan
II. <u>ITEMS FOR CONSIDERATION:</u> 1. Consideration of a request to adopt an ordinance repealing Twin Falls City Code 9-9-21: Use of Wireless Communications Devices. The State legislature passed a new statute regarding texting effective July 1, 2012. 2. Consideration of a request to accept a donation of real property located on the north side of Filer Avenue West. 3. Consideration of adoption of an ordinance transferring the City's 1/3 interest in approximately 20 acres of property located on the north side of Addison Avenue West, immediately west of Rock Creek, to the County of Twin Falls. 4. Consideration of a request to adopt an ordinance transferring approximately 0.29 acre of City owned property located at 156 3rd Avenue North to the Urban Renewal Agency. 5. Presentation of the City Pool Financial Report by Gary Ettenger, CEO of the YMCA. 6. Update of the status of the FY 2012-2013 Budget. 7. Public input and/or items from the City Manager and City Council.	Action Action Action Action Presentation Discussion	Anthony Barnhart Mitch Humble Mitch Humble Mitch Humble Dennis Bowyer/ Gary Ettenger Travis Rothweiler
III. <u>ADVISORY BOARD REPORTS/ANNOUNCEMENTS:</u>		
IV. <u>PUBLIC HEARINGS:</u> 6:00 - None		
V. <u>ADJOURNMENT:</u>		

****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.



June 18, 2012, City Council Meeting

To: Honorable Mayor and City Council

From: Sharon Bryan

Request:

Approval of Liquor, Wine and Beer license renewals for the 2012/2013 year on the condition that they receive their State alcohol license.

Time: Consent Calendar

Background: Renewal of liquor, wine and beer licenses.

Budget Impact: N/A

Regulatory Impact: City and State Code Compliance

Conclusion: Staff recommends approval of the renewal applications.

Attachments: List of all alcohol license renewals.

ALCOHOL LICENSE RENEWALS 2012/2013

BUSINESS NAME	ADDRESS	BEER OFF PREM	BOTTLED/CAN ON PREM.	DRAUGHT ON PREM	WINE OFF PREM	WINE ON PREM	LIQUOR
3 D	139 Shoshone Street North			X		X	
360 'S Bistro & Lounge	360 Main Avenue North			X		X	X
9 Beans and a Burrito	764 Cheney Drive		X				
A Shot in the Dark	1020 Blue Lakes Blvd N		X			X	
A Taste of Thai	837 Poleline Road		X			X	
Addison Kicks 66	240 Addison Avenue West	X			X		
Albertson's #139	1221 Addison Avenue	X			X		
Ameritel Inn - La Quinta	539 Pole Line Road	X			X		
Ameritel-Hilton Garden Inn	1741 Harrison St		X			X	
Anchor Bistro	334 Blue Lakes Blvd N			X			X
Applebee's Neighborhood Grill & Bar	1587 Blue Lakes Blvd			X			X
Asian Food Market	404 Addison Ave West	X			X		
Beacon Club	137 2nd Avenue East			X		X	
Big Smoke	659 Blue Lakes Blvd No	X			X		
Blue Lakes Gas	1230 Blue Lakes Blvd North	X					
Bowladrome	220 Eastland Drive			X		X	
Buffalo Wild Wings	1239 Poe Line Road 303B			X		X	X
Canyon Crest Dining & Event Center	330 Canyon Crest Drive			X		X	X
Canyon Park Development	550 Blue Lakes Blvd N			X			X
Carinos Italian Kitchen, Inc.	1921 Blue Lakes Blvd N			X		X	X
Chili's Bar & Grill	1880 Blue Lakes Blvd No			X		X	X
Costco Wholesale Corp	731 Poleline Road	X			X		
Cucina Gemelli	653 Blue Lakes Blvd N			X		X	
Elevation 486	177 River Vista Place #102			X		X	X
Europe LLC	677 Filer Ave			X		X	
Fil-Mart 66	1612 Blue Lakes North	X			X		
Franklin United, Inc.	1992 Kimberly Road	X					
Franklin United, Inc.	322 West Addison	X					
Fred Meyer's	705 Blue Lakes Blvd	X			X		
Garibaldi's	645 Filer Avenue			X		X	X
Gerties Brick Oven Cookery	602 2nd Avenue South			X			
Hide Out Bar	157 Washington Street			X			
Idaho Joe's	598 Blue Lakes Blvd North		X			X	
Idaho Pizza Company	1859 Kimberly Road			X		X	
Jaker's Restaurant	1598 Blue Lakes Blvd North			X			X
Janitzio Family Mexican Restaurant	164 Main Avenue North			X		X	
Java Jungle / Zulu Bagels	565 Washington Street N			X		X	
Klover Klub Lounge, Inc.	402 Main Avenue North			X		X	X

ALCOHOL LICENSE RENEWALS 2012/2013

Kurt's Prescription Center	1203 Filer Avenue East	X			X		
Kwik Mart	120 Ramage Street	X			X		
LaCasita Mexican Restr.	111 South Park Avenue W		X			X	
LaFiesta Mexican Restaurant	1288 Blue Lakews Blvd N			X		X	X
Log Tavern	401 4th Avenue West			X			X
Lonesome Dove Saloon	600 Main Avenue N			X		X	
Loong Hing	1719 Kimberly Road		X			X	
Magic Bowl	340 2nd Avenue East		X				
Mandarin House	735 Blue Lakes North		X			X	
Maverik	120 6th Avenue West	X			X		
Maxie's Pizza & Pasta	170 Blue Lakes			X		X	
Mi Pueblo Bakery LLC	449 Washington Street North	X	X				
Montana Steak House	1826 Canyon Crest Drive			X		X	X
Oasis Stop n Go #12	1135 Blue Lakes North	X			X		
Oasis Stop n Go #14	1390 Blue Lakes Blvd North	X			X		
Oasis Stop n Go #3	1310 Addison Avenue East	X			X		
Oasis Stop n Go #4	659 Addison Avenue E	X			X		
Oasis Stop n Go #7	2220 Addison Avenue East	X			X		
Oasis Stop n Go #8	515 Washington N	X			X		
Oasis Stop n Go #9	890 Washington South	X			X		
ODunken's	102 Main Avenue North			X		X	
Outback Steak House	1965 Blue Lakes Blvd N			X			X
Peking Restaurant	824 Blue Lakes Blvd North		X			X	
Pioneer Club	1519 Kimberly Road			X			X
Pizza Hut #2178	1099 Blue Lakes Blvd		X				
Pizza Hut #2179	1733 Addison Avenue E		X				
Prasai's Thai 2 Go	1563 Fillmore, Ste 1-A		X				
Prasai's Thai Cuisine	428 2nd Avenue East		X			X	
Pressbox Sports Bar	1749 Kimberly Road			X		X	X
Purity Spa	2221 Addison Ave East	X			X	X	
Red Lion Canyon Springs	1357 Blue Lakes Blvd North			X		X	X
River Rock Grill	1824 Blue Lakes Blvd.			X			X
Rock Creek	200 Addison Avenue West			X			X
Rudy's Price Hardware	147 Main Avenue West		X			X	
Sakura	562 Blue Lakes Blvd		x			x	
Sharis of Twin Falls	1601 Blue Lakes Blvd N		X			X	
Signature	717 West Main			X		X	
Sizzler 650	719 Blue Lakes Blvd N			X		X	
Smith's Food and Drug	1913 Addison Avenue	X			X		
Smoke n Head Inc	287 Washington Street N	X			X		



Date: Monday, June 18, 2012, Council Meeting

To: Honorable Mayor and City Council

From: Captain Anthony Barnhart, Twin Falls Police Department

Request:

Consideration of an ordinance repealing Twin Falls City Code 9-9-21: Use of Wireless Communications Devices. The State legislature passed a new statute regarding texting while driving which will take effect July 1, 2012.

Time Estimate:

Staff requests approximately five minutes to present the proposed ordinance and answer any questions the Council may have.

Background:

Senate Bill 1274 was sponsored by Senator Jim Hammond, R-Coeur d'Alene, and Senator Patti Anne Lodge, R-Huston. The bill prohibits texting while driving a motor vehicle and provides an exception for use of voice-operated or hands-free devices. Violation of the statute is an infraction and violations will not be used to determine points on a driver's record or to establish motor vehicle insurance rates charged by casualty insurers. The House passed the bill 53-17-0 and the Senate passed the bill 29-5-1. The Governor signed the legislation which shall become effective July 1, 2012. The legislation is supported by the Association of Idaho Cities.

Approval Process:

Approval by the City Council.

Budget Impact:

None

Regulatory Impact:

None

Conclusion:

In consultation with the City Attorney, we feel the repeal of City Code 9-9-21 will bring clarity and direction to police officers who have to enforce the new statute. It may avert suppression issues related to the enforcement of the present ordinance. I would ask that the City Council approve the repeal.

Attachments:

1. Twin Falls City Code 9-9-21: Use of Wireless Communications Devices
2. Proposed Ordinance

AB:aed

9-9-21: USE OF WIRELESS COMMUNICATIONS DEVICES: 

(A) No person shall operate a motor vehicle while using an electronic wireless communications device to write, send, or read a text based communication.

(B) As used in this section "write, send, or read a text based communication" means using an electronic wireless communications device to manually communicate with any person using a text based communication, including, but not limited to, communications referred to as a text message, instant message, or electronic mail.

(C) For purposes of this section, a person shall not be deemed to be writing, reading, or sending a text based communication if the person reads, selects, or enters a telephone number or name in an electronic wireless communications device for the purpose of making or receiving a telephone call.

(D) A violation of this section is an infraction punishable by a fine of fifty dollars (\$50.00).

(E) This section shall not apply to an emergency services professional using an electronic wireless communications device while operating an authorized emergency vehicle in the course and scope of his or her duties. (Ord. 2988, 8-9-2010, eff. 10-1-2010)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, REPEALING TWIN FALLS CITY CODE §9-9-21.

WHEREAS, Idaho Code §49-206 prohibits municipalities from enforcing any ordinance on any matter covered by the provisions of Title 49 of the Idaho Code; and,

WHEREAS, The 2012 Legislature has adopted legislation prohibiting texting while driving, in a new Idaho Code §49-1401A, effective July 1, 2012.

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

That Twin Falls City Code §9-9-21 is repealed, effective July 1, 2012.

PASSED BY THE CITY COUNCIL, _____, 2012.

SIGNED BY THE MAYOR _____, 2012.

MAYOR

ATTEST:

DEPUTY CITY CLERK



MONDAY June 18, 2012

To: Honorable Mayor and City Council

From: Mitch Humble, Community Development Director

Request:

Consideration of a request to accept a donation of real property.

Time Estimate:

The staff presentation will take approximately 5 minutes. Time may be needed for questions.

Background:

Gerald Martens owns approximately 3.12 acres of property located on the north side of Filer Avenue West, about 150 feet west of Wendell Street (see the attached location map). The property includes a canal running along its entire east and north boundaries. The property is zoned R-2. Were Mr. Martens to proceed with development of the property, the entire length of the canal would be required to be placed in a pipe underground. Due to the volume and length of the canal, piping it represents a significant development expense. So much so, that the lot yield not be enough to justify the cost of development. Therefore, Mr. Martens approached City staff with the offer to donate the property to the City.

Approval Process:

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

Budget Impact:

There is no significant immediate budget impact associated with the approval of this request. However, upon approval, the City will be responsible for the care and maintenance of the property, which will require some City resources. Initially, the property will be added to the list of properties maintained by the Parks Department.

Regulatory Impact:

Approval of this request will accept the donation of the real property. The City can then proceed to plan for an appropriate public use of the property.

Conclusion:

Staff recommends that the Council accept the donation of real property as presented.

Attachments:

Property Location Map



Wendell St.

Filer Ave. W.

Grandview Dr. N.

N



MONDAY June 18, 2012
To: Honorable Mayor and City Council
From: Mitch Humble, Community Development Director

Request:

Consideration of adoption of an ordinance transferring the City's 1/3 interest in approximately 20 acres of property located on the north side of Addison Avenue West, immediately west of Rock Creek, to the County of Twin Falls.

Time Estimate:

The staff presentation will take approximately 2 minutes. Time may be needed for questions.

Background:

The City owns a 1/3 share of approximately 20 acres located on the north side of Addison Avenue West, immediately west of Rock Creek. The City owns this property cooperatively with Twin Falls County. Twin Falls County also owns approximately 2.78 acres of property at the northeast corner of Blake Street and Shoup Avenue. City staff negotiated with County Commissioners the details of a land exchange involving these two properties. The City would like to obtain the Blake Street property for the development of a Dog Park, while the County would like full control of the Addison Avenue West property for the development of a County park. At their May 29, 2012 meeting, the City Council held a public hearing to receive input on the proposed land exchange. At the end of the public hearing, the Council approved the request.

Approval Process:

Adoption of an ordinance transferring the property to the County is the final Council action in this process. The County Commissioners must also pass a resolution authorizing the transfer of their Blake Street property to the City. That resolution is scheduled to be adopted by the County Commissioners next week. Following adoption of the City ordinance and the County resolution, deeds will be signed and recorded together. Since this is an ordinance adoption, the Council must waive the rules and place the ordinance on third and final reading by title only to adopt the ordinance tonight.

Budget Impact:

Since the two properties are proposed as an even exchange, there is no significant budget impact associated with this item.

Regulatory Impact:

Approval of this request will transfer ownership of the Addison Avenue West property to Twin Falls County.

Conclusion:

Staff recommends that the Council adopt the attached ordinance as presented.

Attachments:

Ordinance No. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AUTHORIZING THE TRANSFER OR CONVEYANCE OF REAL PROPERTY OWNED BY THE CITY TO A TAX SUPPORTED GOVERNMENTAL UNIT.

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

That the City Council hereby determines that it will be in the City's best interest to transfer or convey its interest in the following described real property to the County of Twin Falls, Idaho:

Exhibit "A", attached hereto.

PASSED BY THE CITY COUNCIL, _____, 2012.

SIGNED BY THE MAYOR _____, 2012.

MAYOR

ATTEST:

DEPUTY

CITY

CLERK



ORDER NO. T-20166CJK E-13779MLP

EXHIBIT "A"

PARCEL NO. 1:

Township 10 South, Range 17 East, B.M.

Section 8: $W\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$

PARCEL NO. 2:

A portion of Sections 17 and 18, Township 10 South, Range 17 East, B.M., described as follows:

BEGINNING at a point in a line parallel with and 30.0 feet Northerly from the survey line of U.S. Highway 30, Project No. F-2361(1) Highway Survey, which point is opposite Station 122+00 of said Highway Survey and which point is approximately 215.0 feet West and 98.0 feet South from the Northeast corner of Section 18, Township 10 South, Range 17 East, Boise Meridian; Thence North $3^{\circ}26'43''$ West 20.0 feet to a point in the present right-of-way line of said Highway Survey; Thence in a general Easterly direction along said right-of-way line 725.0 feet, more or less, to a point opposite Station 128+50 of said Highway Survey; Thence South $0^{\circ}11'43''$ East 55.0 feet, more or less, to a point in a line parallel with and 50.0 feet Northerly from the survey line of said Highway Survey; Thence Westerly along said parallel line, being a 11,509.16 foot radius curve left, 652.8 feet to the PLACE OF BEGINNING.

EXCEPTING THEREFROM:

BEGINNING at a point which is approximately 215 feet West and 98 feet South from the Northeast corner of Section eighteen (18); said point of beginning is 50 feet Northerly from the center line of U.S. Highway No 30 and opposite to Highway survey station No. 122; Thence North $3^{\circ}27'$ West, 20 feet; Thence Northeasterly, approximately 228 feet, along Highway right-of-way line to the East line of Section Eighteen (18); Thence South on Section line approximately 73 feet to the new right-of-way line for the highway; Thence Westerly, approximately 215 feet, along the new right-of-way line, which is parallel to and 50 feet North from the Highway center line, TO THE POINT OF BEGINNING.



MONDAY June 18, 2012
To: Honorable Mayor and City Council
From: Mitch Humble, Community Development Director

Request:

Consideration of adoption of an ordinance transferring approximately 0.29 acre of City owned property located at 156 3rd Avenue North to the Urban Renewal Agency.

Time Estimate:

The staff presentation will take approximately 2 minutes. Time may be needed for questions.

Background:

The City owns several public parking lots downtown. One of the lots that the City owns is located at 156 3rd Avenue North, the northeast corner of Gooding Street North and 3rd Avenue North. The City uses a color coding system to identify our various parking lots. This lot is identified as the "Brown Lot". The Brown Lot is located on about 0.29 acre and has 36 parking spaces.

At their May 29, 2012 meeting, the City Council held a public hearing to receive input on a request to sell the Brown Lot to the Urban Renewal Agency for \$57,800. At the end of the public hearing, the Council approved the request. At their June 11, 2012 meeting, the Urban Renewal Agency Board approved the purchase of the Brown Lot from the City.

Approval Process:

Adoption of an ordinance transferring the property to the Agency is the final Council action in this process. Following adoption of the ordinance, the Mayor will sign a deed that will be recorded. Since this is an ordinance adoption, the Council must waive the rules and place the ordinance on third and final reading by title only to adopt the ordinance tonight.

Budget Impact:

Approval of this item will result in the sale of real property to the Urban Renewal Agency. The revenue from that sale will be \$57,800.

Regulatory Impact:

Approval of this request will transfer ownership of the Brown Lot to the Urban Renewal Agency.

Conclusion:

Staff recommends that the Council adopt the attached ordinance as presented.

Attachments:

Ordinance No. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TWIN FALLS, IDAHO, AUTHORIZING THE TRANSFER OR CONVEYANCE OF REAL PROPERTY OWNED BY THE CITY TO A TAX SUPPORTED GOVERNMENTAL UNIT.

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

That the City Council hereby determines that it will be in the City's best interest to transfer or convey its interest in the following described real property to the Urban Renewal Agency of the City of Twin Falls, Idaho:

Lots 17-20, Block 57, of the Twin Falls Townsite, Twin Falls County, Idaho.

PASSED BY THE CITY COUNCIL, _____, 2012.

SIGNED BY THE MAYOR _____, 2012.

MAYOR

ATTEST:

DEPUTY CITY CLERK



Monday, June 18, 2012 City Council Meeting

To: Honorable Mayor and City Council

From: Dennis J. Bowyer, Parks & Recreation Director

Request:

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

Time Estimate:

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

Background:

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

John Pauley, Aquatics Director for the YMCA presented this report to the Parks and Recreation Commission at their February meeting. For the February meeting, the YMCA provided the attached document containing the financials and attendance records for the swimming pool from their fiscal year 2011 and 2011 (old method). This report given to the Parks & Recreation Commission did not have the portion of overall Y memberships that are attributable to the City Pool.

A new report that is attached which was produced by the YMCA shows a portion of the overall Y membership attribute to the City Pool (new method). Also attached is a letter from Gary Ettenger explaining their method to account for a portion of the overall Y membership revenue as City pool revenue.

Typically, the Council receives this report from the YMCA in March or April, but due to multiple scheduling conflicts, it has been delayed.

Also the YMCA has voluntarily withdrawn their request for rate increases at the pool.

Approval Process:

There is no approval process associated with this presentation.

Budget Impact:

There is no immediate budget impact associated with this presentation.

Regulatory Impact:

There is no regulatory impact associated with this presentation.

Conclusion:

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

Attachments:

YMCA's 2010 & 2011 Financial Report – Old Method

YMCA's 2010 & 2011 Financial Report – New Method

Letter from Gary Ettenger, CEO of the YMCA

Concession Agreement – City Pool

Old Method

YMCA of Twin Falls City Pool Profit Loss

		2011					
		1st qtr	2nd qtr	3rd qtr	4th qtr	Total	TOTAL
		Jan - Mar 11	Apr - Jun 11	Jul-Sep 11	Oct-Dec 11	2011	2010
Income							
	City of Twin Falls - Co-Op	10,749.99	10,749.99	17,166.66	30,000.00	68,666.64	42,999.96
	Daily Admissions	12,389.00	17,548.20	31,899.25	6,687.25	68,523.70	64,330.43
	Pool Rentals	3,427.81	3,188.14	3,190.92	2,330.03	12,136.90	12,456.67
	Safety Classes	270.00	3,305.50	0.00	46.00	3,621.50	5,481.00
	Sales - CP	938.68	789.41	1,364.09	629.52	3,721.70	4,922.35
	Swim Lessons	7,217.50	24,287.00	14,845.44	3,348.00	49,697.94	53,189.73
	Swim Team	881.05	6,990.00	135.00	540.00	8,546.05	8,243.00
	Water Aerobics	342.00	0.00	0.00	0.00	342.00	907.50
	Membership - CP	12,159.91	15,857.31	16,287.12	15,280.54	59,584.88	50,150.78
Total Income		48,375.94	82,715.55	84,888.48	58,861.34	274,841.31	242,681.42
Expense							
	Food Expense	0.00	0.00	500.65	0.00	500.65	
	Janitorial Expenses	886.15	2,085.66	897.72	909.33	4,778.86	1,226.48
	Health Insurance	480.00	480.00	480.00	480.00	1,920.00	1,920.00
	Maintenance & Repairs	0.00	0.00	513.08	1,421.78	1,934.86	5,238.20
	Office Supplies	1,249.50	183.74	745.34	300.00	2,478.58	802.88
	Professional Salaries	7,836.48	9,617.00	9,501.10	8,143.80	35,098.38	39,112.47
	Aerobic Instructor Wages	3,128.98	3,565.87	3,986.79	4,044.28	14,725.92	13,360.51
	Clerical Wages	8,058.32	8,850.35	11,237.67	7,019.69	35,166.03	36,029.79
	Lifeguard Wages	14,302.01	21,327.03	29,929.25	14,802.87	80,361.16	81,300.64
	Maintenance Wages	952.67	542.76	1,199.36	1,186.04	3,880.83	6,415.87
	Swim Lessons Wages	2,513.85	6,274.36	13,289.02	3,537.51	25,614.74	22,461.13
	Payroll Tax Expenses	2,814.61	4,534.19	5,289.45	2,963.07	15,601.33	15,199.04
	Pool Chemicals	6,903.38	6,632.87	10,247.96	1,596.53	25,380.74	22,399.01
	Program Supplies	1,044.32	3,134.91	1,838.13	1,692.64	7,710.00	6,507.12
	Retirement	548.54	570.06	665.00	570.07	2,353.67	537.78
	Unemployment	1,218.59	1,605.68	2,323.21	1,278.23	6,425.71	6,357.76
	Utilities	0.00	0.00	3,942.36	16,997.78	20,940.14	0.00
	Workmans Comp	463.90	896.67	1,435.14	476.43	3,272.13	1,969.95
Total Expense		52,401.30	70,301.14	98,021.23	67,420.05	288,143.72	260,838.63
Net Income		-4,025.36	12,414.41	-13,132.75	-8,558.71	-13,302.41	-19,905.46
2010 Attendance Numbers							
	21,440 General Public Visits					20,201 General Public Visits	
	15,230 Y/City Pool Members Visits					10,740 Y/City Pool Members Visits	
	25,775 YMCA Membership Visits					27,768 YMCA Membership Visits	
	62,445 Overall Visits					58,709 Overall Visits	

New Method

YMCA City Pool 1st Draft Profit and Loss with Full Facility Membership

		2010-2011					
		Total	TOTAL				
		2011	2010				
Income							
	Membership %	148,147.17	134,748.10	13% of Total Membership			
	City of Twin Falls - Co-Op	68,666.64	42,999.96				
	Daily Admissions	68,523.70	64,330.43				
	Pool Rentals	12,136.90	12,456.67				
	Safety Classes	3,621.50	5,481.00				
	Sales - CP	3,721.70	4,922.35				
	Swim Lessons	49,697.94	53,189.73				
	Swim Team	8,546.05	8,243.00				
	Water Aerobics	342.00	907.50				
	Membership - CP	59,584.88	50,150.78				
	Total Income	422,988.48	377,429.52				
Expense							
	Accounting	1,507.28	1,386.28	33%			
	Bank Charges	4,215.04	3,552.99	13%			
	Food	1,920.57	1,727.61	33% all staff and board meetings food			
	Computer Contract	2,595.67	2,405.21	33%			
	Janitorial Expenses	4,914.56	2,228.21	25%			
	Office Supplies	7,871.79	4,187.69	25%			
	Payment to Affiliated Org	3,118.40	2,825.35	13%			
	Health Insurance	5,236.00	4,936.00	85% John 33% Sylvia and Linda 15% Gary			
	Promotion/Advertising	5,265.37	3,184.62	13%			
	Liability Insurance	3,000.00	3,000.00	Amount From Prudential Insurance (Scott Standley)			
	Maintenance & Repairs	3,299.47	5,238.20	Only CP expenses			
	Supplies	2,478.58	802.88	Only CP Cost of Goods			
	Professional Admin Staff	41,545.73	39,980.93	Gary 15%, Sylvia, Chantel, and Linda at 33% Dawn 25%			
	Professional Salaries	29,734.70	34,149.87	85% John both years 100% Glen 2010			
	Aerobic Instructor Wages	14,725.92	13,360.51	Only CP			
	Clerical Wages	35,166.03	36,029.79	Only CP			
	Lifeguard Wages	80,361.16	81,300.64	Only CP			
	Maintenance Wages	3,880.83	6,415.87	Only CP			
	Swim Lessons Wages	25,614.74	22,461.13	Only CP			
	Payroll Tax Expenses	17,673.73	17,877.95	Total Fica taxes for payroll listed above			
	Pool Chemicals	25,380.74	22,399.01	Only CP			
	Program Supplies	7,710.00	17,884.97	Only CP			
	Retirement	4,574.73	2,140.37	85% Johns 33% Sylvia Chantel and Linda 15% Gary			
	Unemployment	6,930.87	7,010.96	Total SUTA for payroll listed above			
	Utilities	21,732.14	1,008.00	33% of Internet and 100% Security Sytem at CP			
	Workmans Comp	3,465.43	3,505.48	Total Workmen's Comp for payroll listed above			
	Total Expense	363,919.48	341,000.52				
	Net Income	59,069.01	36,429.00				



YMCA of Twin Falls, Inc.

FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

June 13, 2012

Dennis Bowyer
Director – Parks and Recreation

Dennis,

I look forward to presenting the YMCA's 2011 City Pool Financial Statement to the Mayor and Council on Monday. In addition to the standard statement we typically provide, we have also attempted to put together a method to account for a portion of our Full-Facility membership revenue to be applied to the City Pool statement.

At the presentation, I look forward to providing narrative to go along with the statements I am including with this email. We have done a lot of number "crunching" to try and arrive at a gross revenue number that can be applied to the City Pool budget. The amounts for 2010 and 2011 are included on this second statement. We conducted a 2-year usage study using records from our computer base. For both years, the percentage of Y "Full Facility" members who utilized the city pool was calculated to be 13%. So, we know that 13% of our general membership utilizes the city pool to some degree. For our presentation, I have included 100% of this revenue on the second statement. We feel that this is our first step in determining the true financial impact that the general membership plays in the overall financial impact of the city pool. We also believe that our next step will be to conduct a stratified sampling of our general members who utilize the city pool. This step will take place over the coming 45-day period.

Until we have gathered this additional data, we will voluntarily "table" our request for a fee increase at the city pool.

Thank you and I look forward to being at the meeting on Monday!

Gary Ettenger
YMCA of Twin Falls

	E Street Y	Y/City Pool	Canyon Rim
YMCA			
Line Rd	1751 Elizabeth Boulevard	756 Locust N.	1881 Pole
83301	Twin Falls, ID 83301	Twin Falls, ID 83301	Twin Falls, ID
7447	(208) 733-4384	(208) 734-2336	(208) 734-
	Fax (208) 733-4683		

COPY

CONCESSION AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Y Duties:

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

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

B. Janitorial, Repairs, and Alterations:

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

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

C. Utilities:

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

D. Days of operation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. TERMINATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C-4373

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

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

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

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

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

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

CITY OF TWIN FALLS, a municipal corporation of Idaho

Don Hall
DON HALL, Mayor

ATTEST:

Heidi Sanchez
Deputy City Clerk August 28, 2011

YMCA of Twin Falls, Inc.

Michael Aresc
Michael Aresc, President

STATE OF IDAHO)
 :SS
County of Twin Falls)

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

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

(SEAL)



Elizabeth Luttmer
NOTARY PUBLIC FOR IDAHO
Residing in: Twin Falls, Idaho
My Commission Expires: June 16, 2014

C-437B

**EXHIBIT "A"
MAXIMUM FEES**

Daily Admissions:

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

Annual Passes:

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

Rental Rate:

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

EXHIBIT "B"
INVENTORY OF CITY OWNED FACILITIES

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

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

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