



# Coeur d'Alene

## CITY COUNCIL MEETING

*November 20, 2012*

---

**MEMBERS OF THE CITY COUNCIL:**

**Sandi Bloem, Mayor**

**Councilmen Edinger, Goodlander, McEvers, Kennedy, Gookin, Adams**

# CONSENT CALENDAR

MINUTES OF A REGULAR MEETING OF THE CITY  
COUNCIL OF THE CITY OF COEUR D'ALENE, IDAHO,  
HELD AT THE LIBRARY COMMUNITY ROOM

November 6, 2012

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room November 6, 2012 at 6:00 p.m., there being present upon roll call the following members:

Sandi Bloem, Mayor

Loren Ron Edinger                    ) Members of Council Present  
Mike Kennedy *arrived at 6:04*)  
Woody McEvers                        )  
Dan Gookin                            )  
Steve Adams                          )

Deanna Goodlander                 ) Members of Council Absent

**CALL TO ORDER:** The meeting was called to order by Mayor Bloem.

**PLEDGE OF ALLEGIANCE:** The pledge of allegiance was led by Councilman Gookin.

**PUBLIC COMMENTS:**

**School District Sale of Atlas Property:** Bob Knechtel, 3087 W. Wilbur Avenue; representing the Kootenai County Dog Park Association, expressed concern regarding the sale of the School District property at Atlas Avenue where the Central Bark Dog Park is located. The Association did not receive any advance notice from the School District of the potential sale; however, he understands that their three-year agreement with the District has expired. Mr. Knechtel requested the City help preserve the dog park and/or request an additional 60 days for time to seek solutions for the dog park.

Ms. Gabriel stated that the School District has the property listed for sale, and noted that sealed bids are due on November 15, 2012. Mr. Knechtel stated that the planned McEuen dog park is not large enough to be an exchange for the loss of the Northshire Park. Mr. Gridley stated that there have been recent discussions with the Bureau of Land Management regarding property north of the 95 bridge, and that Mr. Knechtel should contact Parks Director, Doug Eastwood, to discuss potential options. Councilman Kennedy stated he would bring this item forward at the Parks and Recreation Commission meeting being held on November 19, 2012.

**CONSENT CALENDAR:** Motion by Kennedy, seconded by Edinger to approve the consent calendar as presented.

1. Approval of minutes for October 16, 2012.

2. Setting General Services and Public Works Committees meetings for Tuesday, November 13<sup>th</sup> at 12:00 noon and 4:00 p.m. respectively.
3. CONSENT RESOLUTION 12-043: A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE BELOW MENTIONED CONTRACTS AND OTHER ACTIONS OF THE CITY OF COEUR D'ALENE INCLUDING AUTHORIZING THE STREETS DEPARTMENT DECLARATION OF SURPLUS PROPERTY; APPROVING AN AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING WITH DALTON GARDENS FOR THE GOVERNMENT WAY IMPROVEMENT PROJECT AND AUTHORIZING THE DESTRUCTION OF CERTAIN RECORDS FROM POLICE, CITY CLERK AND LEGAL DEPARTMENTS.
4. Approval of the 2012-2013 Snow Plan
5. Setting of Public Hearing: Establishing Drainage Works Utility Rates/Fees for Dec. 4, 2012
6. Annual Request for Downtown Horse-drawn Carriage Rides.

ROLL CALL: Adams Aye; McEvers Aye; Gookin Aye; Kennedy Aye; Edinger Aye. Motion carried.

#### **COUNCIL ANNOUNCEMENTS:**

COUNCILMAN ADAMS: Stated that he and Councilman Gookin met with Street Department staff regarding Leaf Fest and the Snow Plan. He expressed that the crew is very dedicated and felt the Snow Plan is a good plan.

COUNCILMAN GOOKIN: Stated that several citizens have expressed concern about the proposed new tower at 1<sup>st</sup> and Lakeside Avenue. He expressed that the downtown looked different 20 years ago than today, as it used to be historical and quaint. He is concerned with height restrictions for the future and hopes the City examines this code. Additionally, he believes that Idaho Code 50-708, regarding examining accounts, should be done in a formal matter in the open session of the City Council meeting.

COUNCILMAN EDINGER: Reminded citizen to get out and vote.

**APPOINTMENTS – PEDESTRIAN BICYCLE COMMITTEE:** Motion by Kennedy, seconded by McEvers, to appoint Kirsten Pomerantz to the Ped/Bike Advisory Committee. Motion carried, with Councilman Gookin voting No.

**ADMINISTRATOR'S REPORT:** Communication Coordinator, Kristina Lyman, has started work with the City and will be attending the November 20<sup>th</sup> Council meeting. On Saturday, November 10<sup>th</sup>, Specialized Needs Recreation will hold its 8<sup>th</sup> Annual Prom Night at Prairie View Elementary in Post Falls from 6:00 p.m. to 9:00 p.m. If you would like to volunteer or would like more information about SNR's programs, please call Angie Goucher, Executive Director of Specialized Needs Recreation, at 755-6781. Request for Proposals for engineering service will be advertised this Friday for a new water well. Interested parties can contact Jim Markley at the Water Department at 769-2210 for more information. The City of Coeur d'Alene's annual Leaf Fest begins this year on November 13<sup>th</sup>. Leaves will be picked up only once. Please move cars from the street, if possible, during leaf pickup. PLEASE, NO bagged

leaves, mixed branches, debris, or other trash. For more information, call the Street Maintenance Information line at 769-2233. The Government Way project has been completed. The project widened an old, narrow two-lane road to a modern 5-lane arterial with curbs and sidewalks and other amenities. The majority of the \$3.5 million in funding for the street work came from federal highway funds and we thank ITD for their role in administering this contract. We would like to thank our Engineering Department – in particular Gordon Dobler and Chris Bates- for their superb work in coordinating this project and for their hard work in mitigating impacts on local businesses. Congratulations to Chief Wayne Longo who was recognized by the Coeur d’Alene Chamber of Commerce at their 100<sup>th</sup> Annual Luncheon as Distinguished Citizen of the Year for 2012. Chief Longo’s distinction as Citizen of the Year for 2012 reflects his admirable character, tireless work ethic, generous community involvement, and exceptional service quality delivered by this department to the Chamber’s constituents. The “Volunteers in Pruning” (V.I.P.) program trains local tree fans to prune young trees for form and structure. The program targets trees that were planted in parks or along streets within the last three years. The VIP project is sponsored by Community Canopy, a tree care education program of the cities of Coeur d’Alene, Post Falls, Hayden, Spokane, and the Spokane County Conservation District. Free training will be held on Saturday, November 17<sup>th</sup>, at 9:00 a.m., at the Hayden City Hall, 8930 N. Government Way, in exchange for volunteer hours pruning public trees. Space is limited, pre-registration is encouraged. For more information, contact Katie Kosanke, 769-2266. Striping is completed on the lower City Hall parking lot and the lot should be available for use by the end of the week. Project managers expect to shut down work for the winter around the third week of November, at which time both City Hall parking lots will be complete and open to the public, as well as the new portion of the Centennial Trail through McEuen Park. To clarify, 56 more trees will be planted before the end of the project. LCDC has approved a change order, and then it will come to the City. All change orders will be brought forward at project closeout. Officials emphasized progress is weather-dependent. Mayor Bloem was recently selected by readers of the Spokane Coeur d’Alene Living Magazine as a winner of the “Best Elected Official” in their annual Best of City readers’ survey. Congratulations Mayor Bloem!

Councilman Gookin stated that he was informed by team McEuen that the new trees being planted are going to be substantial, more mature sized trees.

#### **RESOLUTION 12-044**

**A RESOLUTION OF THE CITY OF COEUR D’ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING A LABOR AGREEMENT WITH THE COEUR D’ALENE POLICE ASSOCIATION.**

Motion by Edinger seconded by Kennedy to adopt Resolution 12-044.

**DISCUSSION:** Councilman Adams had some concerns/questions regarding the language calling for a financial review in July of each year, and was assured it would be a comprehensive review of the contract. He stated that while hiring a negotiator was not a cost savings to the City, Ms. Stricklin’s knowledge and background in this type of work was a time savings to the process. Pay grades raised in the contract were increases from the 2011 COLA and service time increases will happen incrementally. Councilman Adams stated that he will support the contract. Councilman

Gookin stated he will also support the contract and felt it is a step in the right direction. He also stated that he is concerned with the merit pay as the justification to receive it is a standard or better evaluation, and standard performance is not meritorious. This item applies to all contracts, so it should be looked at in the future. Councilman Edinger wanted to thank Nancy Stricklin and City staff for negotiating this contract and said that they did a good job.

ROLL CALL: McEvers Aye; Gookin Aye; Kennedy Aye; Edinger Aye; Adams Aye. Motion carried.

**EXECUTIVE SESSION:** Motion by Gookin seconded by McEvers to enter into Executive Session as provided by I.C. 67-2345 §C: To conduct deliberations concerning labor negotiations or to acquire an interest in real property, which is not owned by a public agency and I.C. 67-2345 §F, To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal option for pending litigation or controversies not yet being litigated but imminently likely to be litigated.

ROLL CALL: Adams, Aye; McEvers, Aye; Gookin, Aye; Kennedy, Aye; Edinger, Aye. Motion carried.

The Council entered into Executive Session at 6:37 p.m. Members present were the Mayor, City Administrator, City Council, City Attorney, and Deputy City Administrator.

Matters discussed were those of Person Field and Prairie Trail. No action was taken and the Council returned to its regular session at 7:15 p.m.

**ADJOURNMENT:** Motion by Edinger, seconded by Gookin to recess to November 15th at 6:00 p.m. at the Jewett House. Motion carried.

The meeting recessed at 7:15 p.m.

---

Sandi Bloem, Mayor

ATTEST:

---

Renata McLeod,  
City Clerk Apprentice

**GENERAL SERVICE  
STAFF REPORT**

**DATE:** November 13, 2012  
**FROM:** Jon Ingalls, Deputy Administrator

**SUBJECT: ALLEY GARBAGE SERVICE - TWO BLOCK SECTION**

---

**DECISION POINT:**

Would the City Council concur with Waste Management's request to eliminate alley garbage collection for (2) one block sections of alleys in the Forest Cemetery area due to obstructions?

**HISTORY:**

Typically garbage is collected from the alleys in areas of the city where alleys are present. Waste Management has requested that consideration be given to the elimination of alley garbage pick-up for (2) one block sections of alleys in the Forest Cemetery area due to obstructions that require drivers to have to back the collection truck down these sections. Attached is an email from Steve Roberge, District Manager of Waste Management requesting the City Council's consideration of this matter.

**FINANCIAL ANALYSIS:**

There would be no financial impact as a result of this decision.

**PERFORMANCE ANALYSIS:**

Requiring street pick up of garbage from these (2) one block sections would in most cases pose an inconvenience to affected residents. Until these obstructions could be remedied, the safety and productivity consequences of having to back down these alleys would have to be weighed against the inconvenience to residents.

**DECISION POINT/RECOMMENDATION:**

That the City Council support Waste Management's request.

Attachment: (1) Waste Management e-mail this subject  
(2) PowerPoint slides (from Waste Management)



## **Waste Management of Idaho**

**Date: November 13, 2012**

Request: Service customers located between Govt Way/B Street and between Short Ave. and Summit Ave. from the street instead of the alleyway.



**Think Green.**



## **Trucks cannot drive into alley from Short Ave driving north or exit going south.**

- Alley between A St. and Govt Way between Short Ave. and Summit Ave. has guide wires from a power pole that obstruct turning into alley on south end of alley.
- Alley between A St. and B St. between Short and Summit has concrete driveways that obstruct turning into alley on south end of alley. Driveway on east side was recently paved causing an access issue.
- Backing into alleys from Summit Ave. is unsafe for traffic and for customers.



**Alley between Government Way and A St. facing east on Summit Ave: Truck must back into alley from Summit to Short.**



**Alley between Govt Way and A St facing east on Short Ave.: Trucks cannot turn into or out of alley because pole wires and because of fence.**



**Alley between Govt Way and A St. facing south  
towards Short Ave.: Trucks must back down  
narrow alley from Summit to Short.**



**Alley between A St and B St facing east on Summit:  
Trucks must back down alley to service customers**



Alley between A St and B St facing west on Short Ave.: Trucks cannot turn into alley without damaging driveways.



Alley between A St. and B St. facing south towards Short Ave.  
Alley is narrow with vehicle parking and other obstacles.




## Additional points

- Backing is unsafe and should be avoided whenever possible.
- Backing is the leading cause of accidents and cause some of the most severe damage to property and injuries to pedestrians.
- Trash trucks will back into each alley 52 times per year and recycle truck will back into each alley 26 times increasing chance of an incident.
- Several customers have vehicle access in alley increasing the chance of a collision with trucks.
- Majority of customers affected have access on street via driveways.



**PUBLIC WORKS COMMITTEE  
STAFF REPORT**

**DATE:** November 13, 2012  
**FROM:** Christopher H. Bates, Engineering Project Manager   
**SUBJECT:** Relinquishment of the Fill Slope Easement on Ramsey Road in the Fairway Meadows Subdivision

---

**DECISION POINT**

To approve or deny a request from Viking Construction to relinquish a ten foot (10') perpetual fill slope easement to the City of Coeur d'Alene (instrument # 1356977, June 1994) along the easterly boundary of their property at the northwest corner of Lopez Avenue and Ramsey Road (map attached) in the Fairway Meadows subdivision.

**HISTORY**

In 1994, the year prior to the commencement of the Ramsey Road reconstruction project, the noted easement was secured from the Hudson Trust who was the owner of the property west of Ramsey Road, between Kathleen Avenue to the south and the Oakcrest Trailer Park to the north. The Ramsey Road project, which included a full reconstruction of the roadway corridor and a widening from a rough two lane section to a full five lane section with sidewalks and bikepaths, was completed in 1995. The purpose of the easement was to provide a slope buffer for the adjoining ground which was notably higher than the finished elevation of the Ramsey Road section.

The initial phase of the noted Fairway Meadows subdivision was completed in November of 1994, and, the 1<sup>st</sup> Addition which defined the subject property was completed in September of 1996.

The area of the easement was sloped to the west, seeded and has long since stabilized. The ground elevation in that area now follows the slope of the roadway, and does not vary more than a few feet from north to south over a length of +/- 550 lineal feet.

**PERFORMANCE ANALYSIS**

Viking Construction, the current owner of the property that contains the easement, has initiated the building permit process to construct seven (7) apartment buildings w/ approximately 62 units. Their proposal is to construct a block wall around the perimeter of their parcel in order to create a completely level site, instead of one that follows the grade of the adjacent Ramsey Road at +/- 5%. Proposed construction of the wall encroaches into the easement and is therefore not allowed. Relinquishment of the easement would allow the developer to construct his proposed plan without having to complete a major redesign of the site.

## **FINANCIAL ANALYSIS**

There is no financial impact to the City. The easement defines a use, not ownership, and since the property that is "tied up" by the easement is under the ownership of the party making the request, there is no financial impact to the City. However, should the relinquishment of the easement not happen, there would be a financial impact to the developer in redesign costs and possible overall cost to develop the site in a manner that is beneficial to him.

## **SUMMARY**

Viking Construction is requesting the relinquishment of a slope easement on property that they own and plan to develop at the northwest corner of Lopez Avenue and Ramsey Road. Relinquishing the easement would allow the developer to construct a block wall in the area that is currently a "no build" zone, and allow them to create an overall level site, instead of designing the site to follow the slope of the adjacent Ramsey Road (+/- 5%).

The easement which was granted in 1994 prior to the reconstruction of the Ramsey Road corridor, is no longer necessary, and serves no purpose for retention by the City. A recommendation to the City Council approving the request, and subsequent direction for staff to prepare documents for relinquishment and recordation at the County Recorder's Office would bring resolution to the matter.

1356977

PERPETUAL FILL SLOPE EASEMENT

KNOW ALL MEN BY THESE PRESENTS, THAT First Security Bank, N.A., as Trustee of The Hudson Trust, whose address is P.O. Box 6800, GRANTORS, for and in consideration of One Dollar (\$1.00), and other good and for and in consideration, paid by the City of Coeur d'Alene, Kootenai County, State of Idaho, receipt of which is acknowledged do hereby grant, quitclaim and convey unto the City of Coeur d'Alene, a municipal corporation, the Grantee, and its successors and assigns, a perpetual easement to go upon, occupy, and use a portion of the following described land, to wit:

A PARCEL OF LAND IN THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 51 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 34; THENCE NORTH 00°16'43" EAST ALONG THE EAST LINE OF SAID SECTION 34, 1158.60 FEET TO THE INTERSECTION WITH THE EXTENDED SOUTH LINE OF TAX NUMBER 8744; THENCE ALONG SAID EXTENDED SOUTH LINE PARALLEL TO THE SOUTH LINE OF THE NORTH HALF OF THE SAID SOUTHEAST QUARTER OF SECTION 34, 48.00 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE SOUTH 00°16'43" WEST, PARALLEL TO AND 48.00 FEET WESTERLY OF THE SAID EAST LINE OF SECTION 34, 798.24 FEET; THENCE SOUTH, 06°37'08" WEST, 90.55 FEET TO A POINT 58.00 FEET WESTERLY OF THE SAID EAST LINE OF SECTION 34; THENCE NORTH 00°16'43" EAST ALONG A LINE PARALLEL TO AND 58.00 FEET WESTERLY OF THE SAID EAST LINE OF SECTION 34, 888.38 FEET, MORE-OR-LESS, TO THE SOUTH LINE OF SAID TAX NUMBER 8744; THENCE ALONG THE SAID SOUTH LINE OF TAX NUMBER 8744, PARALLEL TO THE SOUTH LINE OF THE NORTH HALF OF THE SAID SOUTHEAST QUARTER OF SECTION 34, 10.00 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING APPROXIMATELY 8432 SQUARE FEET.

BEARINGS ARE BASED ON THE CITY OF COEUR D'ALENE NAD 83 DATUM, RAMSEY ROAD IMPROVEMENT PROJECT.

THE PURPOSE for which this easement is granted to the City of Coeur d'Alene is to permit its employees, agents and contractors to construct and maintain thereon the proper slope on cuts and fills including the right and authority to make all excavations, embankments, cuts and fills requisite to construction of slopes as are necessary in the determination of the Grantee in connection with abutting street improvements, together with the right and privilege in ingress and egress to and from said property for said purposes.

The aforesaid facility shall remain in place as constructed or installed for its intended purpose and shall not be removed or relocated by the GRANTORS, their heirs or assigns, without the

1356977

prior approval of the City of Coeur d'Alene.

The City of Coeur d'Alene, its agents or transferees, shall have the right to perform any maintenance they may deem necessary or wish to exercise in connection with the aforesaid facility (including but not restricted thereto, the right to make necessary repairs, alternations, removals or replacements thereof), together with the right and privilege of ingress and egress to and from said property for said purposes.

It is expressly intended that these burdens and restrictions shall be appurtenant to and run with the land and shall forever bind the Grantors, their heirs and assigns.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 25<sup>th</sup> day of May, 1994.

*Susan Cook V.P.*  
Grantor  
First Security Bank, Trustee  
For the Hudson Trust

STATE OF IDAHO }  
COUNTY OF KOOTENAI } SS  
AT THE REQUEST OF }  
CITY OF COEUR D'ALENE }

By:

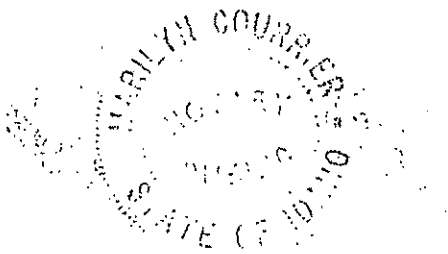
JUN 2 10 43 AM '94

*R. Berg*  
DEPUTY  
FEE \$ *10.00*

STATE OF IDAHO )  
County of Kootenai ) ss.

On this 25<sup>th</sup> day of May, 1994, before me, a Notary Public, personally appeared Susan Cook vice and Security, respectively, of the First Security Bank, N.A. as Trustee of the Hudson Trust, and the persons who executed the foregoing instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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



*Marilyn Courcier*  
Notary Public for Idaho  
Residing at: *Coeur d'Alene*  
My Commission expires: *9/23/94*





2605 W. Hayden Ave.  
Hayden, ID 83835

p: 208.762.9106  
f: 208.762.4507

w: vikinghomes.com  
e: info@vikinghomes.com

October 25, 2012

Chris Bates  
City of Coeur d'Alene, Idaho  
Engineering Project Manager

**RE:** Fairway Meadows Apartments  
1717 Lopez, Coeur d'Alene, Idaho  
Site Development Permit Application submitted 10/5/12

Chris,

The purpose of this letter is to request the City of Coeur d'Alene to relinquish the fill slope easement currently in place along the east property line for the project referenced above. This slope easement was dedicated as part of the Ramsey Road construction project and is no longer needed.

Please call if you have any questions or require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Krajack".

Scott Krajack  
208-762-9106  
[scott@vikinghomes.com](mailto:scott@vikinghomes.com)

RESOLUTION NO. 12-045

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE BELOW MENTIONED CONTRACTS AND OTHER ACTIONS OF THE CITY OF COEUR D'ALENE INCLUDING AUTHORIZING THE POLICE DEPARTMENT TO DECLARE CERTAIN VEHICLES AS SURPLUS AND ALLOWING THEM TO BE SOLD AT AUCTION; APPROVING A DOCK LEASE RENEWAL WITH BROOKS SEAPLANE; APPROVING A DOCK LEASE RENEWAL WITH CD'A PARASAIL AND WATERSPORTS; APPROVING A DOCK LEASE RENEWAL WITH LAKE CD'A CRUISES; APPROVING LEASE AGREEMENTS WITH PANHANDLE KIWANIS FOR THE TASTE OF COEUR D'ALENE EVENT & PANHANDLE PARKS FOUNDATION FOR A NEW FESTIVAL OVER LABOR DAY WEEKEND; APPROVING ENGINEERING SERVICES CONTRACT WITH J.U.B. ENGINEERS FOR SELTICE WAY; APPROVING AMENDMENT NO. 2 – AUTHORIZATION FOR ADDITIONAL SERVICES WITH J.U.B. ENGINEERS FOR THE 2012 WASTEWATER COLLECTION SYSTEM PROJECTS; AUTHORIZING THE DESTRUCTION OF RECORDS FOR THE FINANCE DEPARTMENT; AND APPROVING AN AGREEMENT FOR PRE-PURCHASE OF GE TERTIARY FILTRATION EQUIPMENT FOR WWTP PHASE 5C.1.

WHEREAS, it has been recommended that the City of Coeur d'Alene enter into the contract(s), agreement(s) or other actions listed below pursuant to the terms and conditions set forth in the contract(s), agreement(s) and other action(s) documents attached hereto as Exhibits "A through I" and by reference made a part hereof as summarized as follows:

- A) Authorizing the Police Department to declare certain vehicles as surplus and allowing them to be sold at auction;
- B) Approving a Dock Lease Renewal with Brooks Seaplane;
- C) Approving a Dock Lease Renewal with Cd'A Parasail and Watersports;
- D) Approving a Dock Lease Renewal with Lake Cd'A Cruises;
- E) Approving Lease Agreements with Panhandle Kiwanis for the Taste of Coeur d'Alene event & Panhandle Parks Foundation for a new festival over Labor Day Weekend;
- F) Approving Expenditure for Engineering Services with J.U.B. Engineers for Seltice Way;
- G) Approving Amendment No. 2 – Authorization for Additional Services with J.U.B. Engineers for the 2012 Wastewater Collection System Projects;
- H) Authorizing the Destruction of Records for the Finance Department;

D) Approving an Agreement for Pre-purchase of GE Tertiary Filtration Equipment for WWTP Phase 5C.1;

AND;

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof to enter into such agreements or other actions; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the City enter into agreements or other actions for the subject matter, as set forth in substantially the form attached hereto as Exhibits "A through I" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreements or other actions so long as the substantive provisions of the agreements or other actions remain intact.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized to execute such agreements or other actions on behalf of the City.

DATED this 20<sup>th</sup> day of November, 2012.

\_\_\_\_\_  
Sandi Bloem, Mayor

ATTEST

\_\_\_\_\_  
Susan K. Weathers, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER KENNEDY Voted \_\_\_\_\_

COUNCIL MEMBER GOODLANDER Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

COUNCIL MEMBER ADAMS Voted \_\_\_\_\_

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.



## STAFF REPORT

TO: City Council

FROM: Wayne Longo  
Chief of Police

SUBJECT: Declare Used Surplus Vehicles

DATE: November 20, 2012

---

**Decision Point:** Authorization to declare City owned vehicles as surplus and sell at auction. (Vehicle list attached)

**History:** When vehicles acquired by the Coeur d'Alene Police Department have reached the end of their usable life within the department, they are turned over to the Street Department Shop Supervisor for reassignment or surplus disposal.

**Financial Analysis:** There will be no financial impact to the City. The auction house receives a percentage of the sale price. They receive a 15% commission for sales up to \$1000 and 10% for sales over \$1000. There is minimal cost involved to the Department for shuttling vehicles to Post Falls for auction.

**Performance Analysis:** The Street Department Shop Supervisor has deemed the listed vehicles as having little value to city or other departments. Due to vehicle condition, vehicle reutilization would be cost prohibitive.

**Quality of Life Analysis:** The financial gain from the sale of surplus vehicles will be placed back in the City's General Fund.

**Decision Point:** Declare the listed vehicles as surplus and sell at auction. (Vehicle list attached)

Wayne Longo  
Chief of Police

Attached: Vehicle Surplus List

**Vehicle Surplus List**

1996 Ford Crown Victoria (P197)  
VIN# 2FALP71WXTX125832

1995 Chevrolet Astro Van (P82)  
VIN# 1GNEL19W5SB208433

1999 Ford Crown Victoria (P680)  
VIN# 2FAFP71W0XX177070

1999 Ford Crown Victoria (P679)  
VIN# 2FAFP71W4XX177069

2001 Chevrolet Impala (P793)  
VIN# 2G1WF55K919294594

1995 Ford Crown Victoria (K388511)  
VIN# 2FALP71W9SX177094

1994 Ford Taurus (P871)  
VIN# 1FALP5248RA209988

1998 Chevrolet Lumina (P1187)  
VIN# 2G1WL52KOW9211039

**PARKS AND RECREATION COMMISSION  
STAFF REPORT**

**Date:** October 22<sup>nd</sup>, 2012  
**From:** Doug Eastwood, Parks Director  
**SUBJECT:** **Brooks Seaplane Agreement Renewal** *(Council Action Required)*

---

**DECISION POINT:**

Extend the Brooks Seaplane agreement.

**HISTORY:**

Brooks Seaplane has been leasing Bay 5 on the commercial dock for over 20 years.

**FINANCIAL ANALYSIS:**

The rental amounts, as per the lease agreements, are increased each year based on the current CPI (Consumer's Price Index). The lease will be \$ 3,173.13, based on a monthly rental of \$ 444.42 per month, per bay, for April 1<sup>st</sup> – October 31<sup>st</sup>, and \$ 62.22, which is the two percent (2%) Department of Lands fee. The lease will be \$ 1,133.26 based on a monthly rental of \$ 222.21 per month, per bay, for November 1<sup>st</sup> - March 31<sup>st</sup>, and \$ 22.22, which is the two percent (2%) Department of Lands fee.

**PERFORMANCE ANALYSIS:**

Brooks Seaplane currently has a 4-year lease agreement with the city that will expire on October 31<sup>st</sup>, 2013. Section 3 of this agreement allows them to submit a written request for a two-year extension of their lease. Brooks Seaplane has submitted a letter requesting this two-year extension with a new expiration date of March 31, 2016.

**DECISION POINT / RECOMMENDATION:**

Extend the lease agreement with Brooks Seaplane.

## LEASE AGREEMENT

THIS LEASE, entered into this 20<sup>th</sup> day of November, 2012, by and between the **CITY OF COEUR D'ALENE**, a municipal corporation organized and existing under the laws of the state of Idaho, whose address is 710 E. Mullan Avenue, Coeur d'Alene, Idaho 83814, hereinafter referred to as the "Lessor," and **GRANT D. BROOKS d/b/a BROOKS SEAPLANE SERVICE, INC.**, with its principle place of business at P O Box 1028, Coeur d'Alene, Idaho 83816, hereinafter referred to as the "Lessee,"

### WITNESSETH:

That the Lessor, for and in consideration of the rents and covenants hereinafter mentioned to be paid and performed by the Lessee, does hereby lease and let unto the Lessee the following described moorage on the South side of the City Dock, to wit:

THAT SPACE DESCRIBED AS BAY 5 ON THE SOUTH SIDE OF THE CITY DOCK.

Said bay is depicted on the attached drawings identified as Exhibit "A," and by this reference incorporated herein.

Section 1. Term: The term of this lease shall be two (2) years commencing April 1, 2014, and ending March 31, 2016. Any property left beyond March 31, 2016, will be impounded and returned to the Lessee only upon payment of reasonable impounding costs, fees, and storage. All rent is to be paid in advance as described below.

Section 2. Rental: The Lessee agrees to pay as rental for use of the moorage space and portion of the subject dock for the first year of the lease the sum of Four Thousand Three Hundred Six Dollars and 39/100 Dollars (\$4,306.39). An initial payment of Three Thousand One Hundred Seventy-Three Dollars and 13/100 (\$3,173.13) is due and payable on April 1, 2014, which reflects a monthly rate of Four Hundred Forty-Four Dollars and 42/100 (\$444.42), for the months of April through October 2014 plus the 2% Department of Lands Fee of Sixty-Two Dollars and 22/100 (\$62.22). A second payment of One Thousand One Hundred Thirty-Three Dollars and 26/100 (\$1,133.26) is due and payable on November 1, 2014, which reflects a monthly rate of Two Hundred Twenty-Two Dollars and 21/100 (\$222.21) for the months of November 2014 through March 2015 plus the 2% Department of Lands fee of Twenty-Two Dollars and 22/100 (\$22.22).

Payments for rental for each subsequent year shall be made in advance of April 1 for the period of April 1 through October 31, and in advance of November 1 for the period of November 1 through March 31. Annual fee increases will be based on the Consumer Price Index (CPI) Western.

Section 3. Renegotiation: Lessee may request in writing a two (2) year extension of this agreement for the period from April 1, 2016, to March 31, 2018, by submitting to Lessor a written request for extension after April 1, 2015, and prior to September 1, 2015. Upon receipt of such request, the Lessor will consider whether it will grant an additional two (2) year extension and if so,

the parties may mutually renegotiate terms applicable to said extension. Such request can be made, in writing, in each succeeding even year between the dates of April 1 and November 1.

Section 4. Additional Rental: The State of Idaho Land Board has initiated a fee or other charge against the Lessor, during the term of this lease, for maintenance, operation, placement, and use of the City Dock, the Lessee shall pay to the Lessor its proportionate share of such rental or fee which for the first year of this lease is \$84.44, or 2% of the annual fee. This fee is included in Section 2, should the State of Idaho charge any other or additional fee Lessee shall be responsible for a proportionate share.

Section 5. Utilities: The Lessee agrees to pay all electrical services and other utility costs incurred at said dock.

Section 6. Maintenance: The Lessee agrees at Lessee's sole cost within 5 five days to repair any damage done to the City Dock, including but not limited to decking, railings, pilings, walkways, and float logs, caused by the Lessee, Lessee's employees, agents, customers, or equipment and to promptly notify the City Parks Director of any such damages. Lessee is expected to not conduct any activity, or operate equipment in any manner that could potentially cause damage to the City Dock, including but not limited to decking, railings, pilings, walkways, and float logs.

Section 7. Improvements or Construction: The Lessee shall not construct anything on or about said dock without the written consent of the Director of Parks. The Lessee agrees that City has the right to reconstruct and modify, including expansion of the dock, at any time during the term of the Lease. Lessee further agrees that it shall have no claim against Lessor for any inconvenience or lost income that may result from reconstruction, modification, or expansion of the dock.

Section 8. Signs: Except as set forth in this section and in Section 10, entitled "Souvenir Sales," no signs for advertising purposes or otherwise shall be attached to the dock or affixed in the area adjacent to the dock, except a small sign designating the owner or the name of the boat and its location, which sign must be approved by the Director of Parks and be in conformance with the Municipal Sign Code.

Section 9. Alcoholic Beverages: The Lessee shall not dispense by gift, sale or otherwise, or allow anyone else on the deck or watercraft for which the space is leased, to dispense by gift or sale, or otherwise, any alcoholic beverage, including but not limited to beer and wine, within the City limits of the City of Coeur d'Alene which extends 1,000 feet from the shoreline. The Lessee shall not permit any person to debark from the watercraft to the City dock with any opened, sealed or unsealed container of any alcoholic beverage.

Section 10. Souvenir Sales: The Lessee may sell from the dock non-food items directly related to its business, with the following conditions. The only items that may be sold are hats, t-shirts, sweatshirts, mugs, drinking cups, bumper stickers, and pennants provided such items either bear the Lessee vendor's logo or some other mark indicating a relation to the Lessee vendor's business. Provided, however, that sales and display of the items are to be confined to the interior of their respective booths, which booths and location must be approved in writing by the Parks Director prior to placement and must be removed from the premises at the close of each day. Signs

advertising the items for sale must be approved by the Parks Director and be in conformance with the Municipal Sign Code. The City reserves the right to direct Lessee to immediately cease the sale of souvenir items if in the City's sole discretion the continued sale of souvenir items creates an unsafe condition upon the City's dock. In such event, Lessee shall have no claim for damages against Lessor.

Section 11. Use of Leased Premises: It is understood and agreed that the Lessee will use the leased premises and any dock extension owned by the Lessee only for the moorage of his seaplanes, to offer rides in seaplanes to the public, and to student fliers participating in his seaplane flying school, to sell gasoline to other seaplanes and, when necessary in emergencies caused by weather conditions or the condition of visiting seaplanes, to allow such seaplanes to be moored or stored on or at the part of the dock being leased by the Lessee. The Lessee shall make no sales from the dock of merchandise of any type including but not limited to watercraft, food, beverages, except the sale of gasoline to other seaplanes and souvenir sales as allowed by Section 10 entitled "Souvenir Sales." It is further understood and agreed that the general public shall at all times be invited to patronize the Lessee and shall have free access to and from the dock and the use thereof without charge by the Lessee. Lessor, or its Parks Director shall approve the manner of the moorage of the seaplanes or of the dock extension. Due to increased water activity on the 4<sup>th</sup> of July, access to the dock will be restricted for commercial activity from 6:00 p.m. to the following morning.

Section 12. Liability: The Lessee covenants to defend, indemnify, and hold the Lessor harmless from any and all demands, loss or liability resulting at any time or times from injury to or the death of any person or persons and/or from damage to any and all property occurring from the negligence or other fault or omission of the Lessee, Lessee's agents, employees and/or patrons in and about the leased premises, on or about or during cruises, flights, other activities associated with Lessee's use, or resulting from noncompliance with any law, ordinance, or regulation respecting the condition, use, occupation, sanitation or safety of the leased premises or any part thereof. The phrase in and about the leased premises shall mean the City Dock and all other areas owned, maintained, or regulated by Lessor upon which Lessee's customers and potential customers, invitee's, employees, and agents utilize in the course of his/her cruise, flights, other activities associated with Lessee's use, or inquiry about the same on Lessee's watercraft or in the course of access to or egress from Lessee's watercraft, including specifically, but not limited to, the waters surrounding the dock, the beach, sidewalks, ramp, parking areas, and other amenities and structures whether natural or manmade in the vicinity of the City Dock upon which or by which a customer, potential customer, invitee, employee, and agent of Lessee crosses until that person has left City property. To this end, the Lessee shall at its own expense obtain a policy or contract of insurance or comprehensive liability plan naming the Lessor as an additional insured, which policy, contract or plan shall insure against loss for personal injury or death or property damage in an amount of at least One Million Dollars (\$1,000,000). Insurance coverage shall include coverage for those claims which arise in and about the leased premises as defined above. A copy of such policy shall be filed in the office of the City Clerk together with a certificate of insurance showing such policy to be in effect at all times during the term of this lease. The certificate of insurance in a form acceptable to the City shall provide at least thirty (30) days written notice to the Lessor prior to cancellation of the policy. This policy must run for the entire period of this lease.

Section 13. Assignability: Lessee shall not assign the lease or sublet the bay, or any part thereof, during the term hereof, without first having obtained the written consent of the Lessor to do so.

Section 14. Filing of Charges and Schedules: The Lessee shall at all times during the term hereof keep on file with the City Clerk of Coeur d'Alene a current schedule of its hours of operation and charges to the public.

Section 15. Interference With Use By Other Lessees: The Lessee shall not hamper or interfere with the use of the dock or other moorage spaces leased by the Lessor to other lessees.

Section 16. Removal in Emergency: Should it appear to the Lessor that because of flooding or other danger, the property of the Lessor is endangered by the mooring of watercraft, the Lessee shall, immediately after receiving notice, remove the watercraft from the leased premises until the danger has ceased as determined by Lessor.

Section 17. Other Laws: Lessee agrees it shall comply with all local, state, and federal laws, statutes, rules and regulations, including agency rules and regulations, which may apply to Lessee's use of the leased premises.

Section 18. Default: In the event the Lessee fails, neglects, or refuses to perform any covenant or condition required of Lessee herein, that Lessor may terminate this lease and reenter and retake possession of the leased space, retaining any and all payments made by the Lessee as liquidated damages, or the Lessor may, at its option, enforce the specific performance of the terms hereof, or take such other recourse as may be open to it in law or in equity. In any of such events, the Lessee agrees to pay all expenses, including a reasonable attorney's fee, in any suit or action brought by the Lessor.

Lessee further agrees, in the event of default, that Lessor may impound property moored at or on the dock and store the same at Lessee's expense at a location chosen by Lessor.

Section 19. Notice: Provided, however, that before declaring such default, the Lessor shall notify the Lessee in writing of the particulars in which it deems the Lessee to be in default, and the Lessee shall have seven (7) days from the time such written notice has been placed in the United States Mail addressed to the Lessee at the last address the Lessee has left with the Lessor, with proper postage affixed, within which to remedy the default. Any notice required herein to be given to City shall be written and deemed received by City when personally delivered to the office of the City Clerk, 710 Mullan Avenue, Coeur d'Alene, Idaho 83814. Any notice required herein to be given to Lessee shall be written and deemed received by Lessee when addressed to P.O. Box 1028, Coeur d'Alene, Idaho 83816 and deposited in the United States mail with proper postage affixed thereto. In lieu of service by mail, a notice of default or of termination may be served in the manner provided for the service of process under the Idaho Rules of Civil Procedure, Rule 5(b).

Section 20. Lessor's Option to Terminate Lease: The Lessor may at any time after ten (10) day's written notice terminate this lease, retake possession of the leased space upon payment to the Lessee of the prorated, unearned portion of the lease payment. The notice of the exercise by the Lessor of its

option to terminate the lease will identify any infraction in this agreement that causes termination, or the city may terminate the agreement for construction, access, or other needs or uses of said lease site.

Section 21. Time of the Essence: Time is of the essence of this Lease.

Section 22. Parking: The parties recognize that the city is involved in a process of developing a downtown public properties plan that may modify, move or eliminate some parking in the present downtown public parking lots. Lessee acknowledges and agrees that this may occur and may effect the parking areas presently used by lessee's customers. In the event of said occurrence lessees hereby release, hold harmless and waive any claim whatsoever lessee may have against the Lessor its employees, agents, elected and appointed officials in the event parking is modified.

The terms and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, and assigns of the respective parties.

IN WITNESS WHEREOF, the Lessor has caused this lease to be executed by its Mayor and attested by its City Clerk, and the corporate seal hereunto affixed, and the Lessee has signed the same, the day and year first above written.

LESSOR:  
CITY OF COEUR D'ALENE

LESSEE:  
GRANT D. BROOKS d/b/a  
BROOKS SEAPLANE SERVICE

By: \_\_\_\_\_  
Sandi Bloem, Mayor

By: \_\_\_\_\_  
Grant D. Brooks, President

ATTEST:

By: \_\_\_\_\_  
Susan K. Weathers, City Clerk



STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this 20<sup>th</sup> day of November, 2012, before me, a Notary Public, personally appeared **Sandi Bloem and Susan K. Weathers**, known to me to be the Mayor and City Clerk, respectively, of the **City of Coeur d'Alene** and the persons who executed the foregoing instrument and acknowledged to me that said City of Coeur d'Alene executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

\*\*\*\*\*

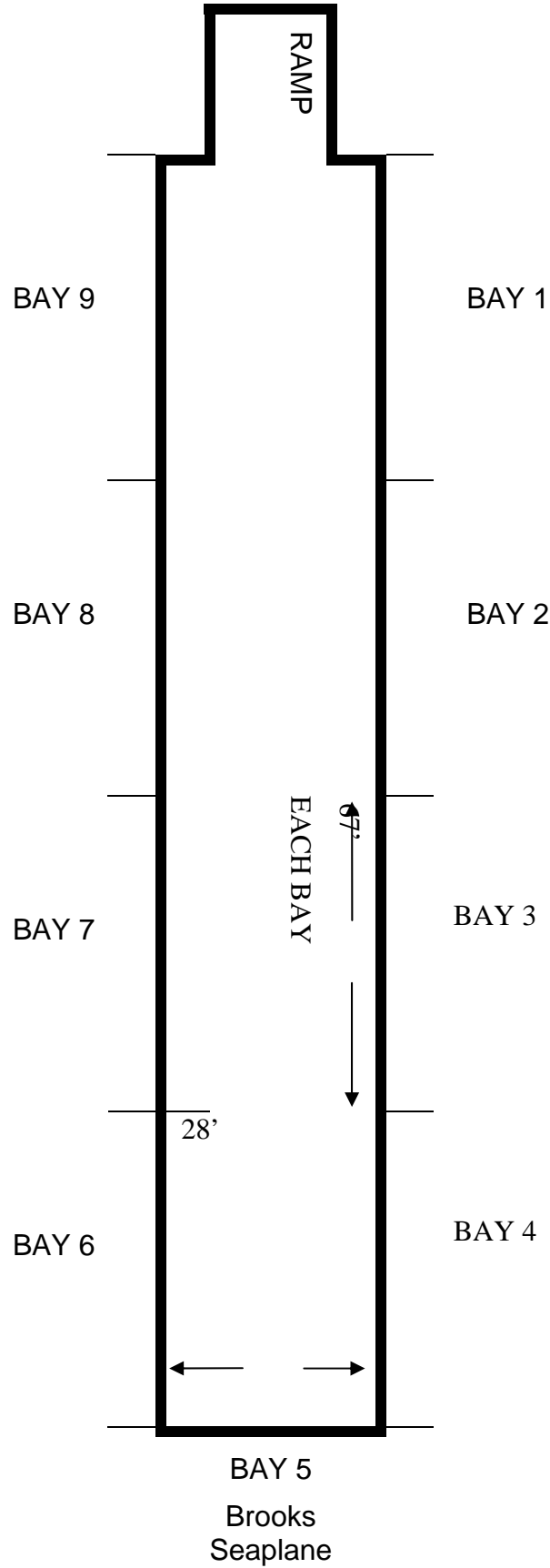
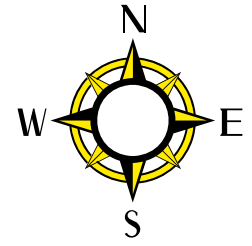
STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this \_\_\_\_\_ day of November, 2012, before me, a Notary Public, personally appeared **GRANT D. BROOKS**, known to me to be the President of **BROOKS SEAPLANE SERVICE**, and the person whose name is subscribed to the within instrument and acknowledged that such corporation executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

Exhibit "A"



**PARKS AND RECREATION COMMISSION  
STAFF REPORT**

**Date:** October 22<sup>nd</sup>, 2012  
**From:** Doug Eastwood, Parks Director  
**SUBJECT:** **CDA Parasail & Watersports Agreement Renewal** *(Council Action Required)*

---

**DECISION POINT:**

Extend the Coeur d'Alene Parasail and Watersports agreement.

**HISTORY:**

Coeur d'Alene Parasail & Watersports has been leasing Bays 4 and 9 on the commercial dock for over 16 years.

**FINANCIAL ANALYSIS:**

The rental amounts, as per the lease agreements, are increased each year based on the current CPI (Consumer's Price Index). The 2014 total lease will be \$ 8,888.30, based on a monthly rental of \$ 888.83, per bay, and \$ 177.77, which is the two percent (2%) Department of Lands fee.

**PERFORMANCE ANALYSIS:**

Coeur d'Alene Parasail & Watersports currently has a 4-year lease agreement with the city that will expire on September 30, 2013. Section 3 of this agreement allows them to submit a written request for a two-year extension of their lease. Coeur d'Alene Parasail & Watersports has submitted a letter requesting this two-year extension with a new expiration date of September 30, 2015.

**DECISION POINT / RECOMMENDATION:**

Extend the lease agreement with Coeur d'Alene Parasail and Watersports.

LEASE AGREEMENT

THIS LEASE, entered into this 20<sup>th</sup> day of November, 2012, by and between the **CITY OF COEUR D'ALENE**, a municipal corporation organized and existing under the laws of the state of Idaho, whose address is 710 E. Mullan Avenue, Coeur d'Alene Idaho 83814, hereinafter referred to as the "Lessor," and **BENJAMIN C. & RUTHIE RODRIGUEZ d/b/a COEUR D'ALENE PARASAIL & WATERSPORTS, INC.**, with its principle place of business at 7040 N Valley Street, Dalton Gardens, Idaho 83815, hereinafter referred to as the "Lessee,"

W I T N E S S E T H:

That the Lessor, for and in consideration of the rents and covenants hereinafter mentioned to be paid and performed by the Lessee, does hereby lease and let unto the Lessee the following described moorage along the Westside of the City Dock, to wit:

THAT SPACES DESCRIBED AS BAY 4 ON THE EAST SIDE  
AND BAY 9 ON THE WEST SIDE OF THE CITY DOCK.

Said bays are depicted on the attached drawing identified as Exhibit "A" and by this reference incorporated herein.

Section 1.     Term: The term of this lease shall be two (2) years from May 1<sup>st</sup> through September 30<sup>th</sup> each year, commencing May 1, 2014, and ending September 30, 2015. Any property left beyond September 30, 2015, will be impounded and returned to the Lessee only upon payment of reasonable impounding costs, fees, and storage. All rent is to be paid in advance as described below.

Section 2.     Rental: The Lessee agrees to pay as rental for the right of such moorage space and the use of said portion of said dock in advance of May 1, 2014, for the first year of the lease, the sum of Eight Thousand Eight Hundred Eighty-Eight and 30/100 Dollars (\$8,888.30), based on a monthly rental of Eight Hundred Eighty Eight and 83/100 Dollars (\$888.83) per month per bay and One Hundred Seventy Seven and 77/100 (177.77), the (2%) Department of Lands fee as identified in Section 4. Annual fee increases will be based on the Consumer Price Index (CPI) Western. For the second year of the Lease and each subsequent year thereafter until termination, the monthly rental amount shall be paid in advance of May 1<sup>st</sup> of each year.

Section 3.     Renegotiation: Lessee may request in writing a two (2) year extension of this agreement for the period from May 1, 2016, to September 30, 2017, by submitting to Lessor a written request for extension after May 1, 2014, and prior to October 1, 2014. Upon receipt of such request, the Lessor will consider whether it will grant an additional two (2) year extension and if so, the parties may mutually renegotiate terms applicable to said extension. Such request can be made, in writing, in each succeeding even year between the dates of April 1 and October 1.

If the parties are unable to negotiate terms mutually agreeable to both parties within sixty (60) days of the date of receipt of the request from Lessee for an extension of the original agreement

or extension of the extended agreement, then no extension shall occur and the lease shall expire according to previously agreed upon terms.

Section 4. Additional Rent: The State of Idaho Land Board has initiated a fee or other charge against the Lessor, during the term of this lease, for maintenance, operation, placement, and use of the City Dock, the Lessee shall pay to the Lessor its proportionate share of such rental or fee which for the first year of this lease is \$177.17, or 2% of the annual fee. This fee is included in Section 2. Should the State of Idaho charge any other or additional fee, Lessee shall be responsible for a proportionate share.

Section 5. Utilities: The Lessee agrees to pay all electrical services and other utility costs incurred at said dock.

Section 6. Maintenance: The Lessee agrees at Lessee's sole cost within 5 five days, to repair any damage done to the City Dock, including but not limited to decking, railings, pilings, walkways, and float logs, caused by the Lessee, Lessee's employees, agents, customers, or equipment and to promptly notify the Parks Director of any such damages. Lessee is expected to not conduct any activity, or operate equipment in any manner that could potentially cause damage to the City Dock, including but not limited to decking, railings, pilings, walkways, and float logs.

Section 7. Improvements or Construction: The Lessee shall not construct anything on or about said dock without the written consent of the Parks Director. The Lessee agrees that City has the right to reconstruct and modify, including expansion of the dock, at any time during the term of the Lease. Lessee further agrees that it shall have no claim against Lessor for any inconvenience or lost income that may result from reconstruction, modification, or expansion of the dock.

Section 8. Signs: Except as set forth in this section and in Section 10, entitled "Souvenir Sales," no signs for advertising purposes or otherwise shall be attached to the dock or affixed in the area adjacent to the dock, except a small sign designating the owner or the name of the boat and its location, which sign must be approved by the Parks Director and be in conformance with the Municipal Sign Code.

Section 9. Alcoholic Beverages: The Lessee shall not dispense by gift, sale or otherwise, or allow anyone else on the deck or watercraft for which the space is leased, to dispense by gift or sale, or otherwise, any alcoholic beverage, including but not limited to beer and wine, within the City limits of the City of Coeur d'Alene which extends 1,000 feet from the shoreline. The Lessee shall not permit any person to debark from the watercraft to the City dock with any opened, sealed or unsealed container of any alcoholic beverage.

Section 10. Souvenir Sales: The Lessee may sell from the dock non-food items directly related to its business, with the following conditions. The only items that may be sold are hats, t-shirts, sweatshirts, mugs, drinking cups, bumper stickers, and pennants provided such items either bear the Lessee vendor's logo or some other mark indicating a relation to the Lessee vendor's business. Provided, however, that sales and display of the items are to be confined to the interior of their respective booths, which booths and location must be approved in writing by the Parks Director prior to placement and must be removed from the premises at the close of each day. Signs

advertising the items for sale must be approved by the Parks Director and be in conformance with the Municipal Sign Code. The City reserves the right to direct Lessee to immediately cease the sale of souvenir items if in the City's sole discretion the continued sale of souvenir items creates an unsafe condition upon the City's dock. In such event, Lessee shall have no claim for damages against Lessor.

Section 11. Use of Leased Premises at Bay 9: It is understood and agreed that the Lessee will use the leased premises only for the purpose of mooring one (1) power motor boat with flat decking specifically designed for parasailing by take-off and landing on an attached deck and loading and unloading passengers of said boat for transporting to parasailing locations. It is specifically understood that no parasailing may occur on or from the City dock or within the City limits of Coeur d'Alene. Except as set forth in Section 10 entitled "Souvenir Sales," the Lessee shall make no sales from the dock of merchandise of any type including but not limited to watercraft, food, or beverages. It is further understood and agreed that the general public shall at all times be invited to patronize the Lessee and shall have free access to and from the dock and the use thereof without charge by the Lessee. The manner of moorage of the watercraft shall be approved by the Lessor or its Parks Director. Due to increased water activity on the 4<sup>th</sup> of July, access to the dock will be restricted from 6:00 p.m. to the following morning.

Section 12. Use of Leased Premises at Bay 4: It is understood and agreed that the Lessee will use the leased premises only for the moorage of low tech watercraft for hire, and the loading and/or unloading of said craft. Low tech is described as aquatic equipment with zero (0) horsepower or that which is propelled by human power only. Except as set forth in Section 10 entitled "Souvenir Sales," the Lessee shall make no sales from the dock of merchandise of any type including but not limited to watercraft, food, or beverages. It is further understood and agreed that the general public shall at all times be invited to patronize the Lessee and shall have free access to and from the dock and the use thereof without charge by the Lessee. The manner of moorage of the watercraft shall be approved by the Lessor or its Parks Director. Due to increased water activity on the 4<sup>th</sup> of July, access to the dock will be restricted for commercial activity from 6:00 p.m. to the following morning.

Section 13. Liability: The Lessee covenants to hold the Lessor harmless from any and all demands, loss or liability resulting at any time or times from injury to or the death of any person or persons and/or from damage to any and all property occurring from the negligence or other fault or omission of the Lessee, Lessee's agents, employees and/or patrons in and about the leased premises, on or about or during activities associated with Lessee's use, or resulting from noncompliance with any law, ordinance, or regulation respecting the condition, use, occupation, sanitation or safety of the leased premises or any part thereof. The phrase "in and about the leased premises" shall mean the City Dock and all other areas owned, maintained, or regulated by Lessor upon which Lessee's customers and potential customers, invitee's, employees, and agents utilize in the course of his/her activity associated with Lessee's use, or inquiry about the same on Lessee's watercraft or in the course of access to or egress from Lessee's watercraft, including specifically, but not limited to, the waters surrounding the dock, the beach, sidewalks, ramp, parking areas, and other amenities and structures whether natural or manmade in the vicinity of the City Dock upon which or by which a customer, potential customer, invitee, employee, and agent of Lessee crosses until that person has left City property. To this end, the Lessee shall at its own expense obtain a policy or contract of

insurance or comprehensive liability plan naming the Lessor as an additional insured, which policy, contract or plan shall insure against loss for personal injury or death or property damage in an amount of at least One Million Dollars (\$1,000,000). Insurance coverage shall include coverage for those claims which arise in and about the leased premises as defined above. A copy of such policy shall be filed in the office of the City Clerk together with a certificate of insurance showing such policy to be in effect at all times during the term of this lease. The certificate of insurance in a form acceptable to the City shall provide at least thirty (30) days written notice to the Lessor prior to cancellation of the policy.

This policy must run for the entire period of this lease.

Section 14. Assignability: Lessee shall not assign the lease or sublet the bay, or any part thereof, during the term hereof, without first having obtained the written consent of the Lessor to do so.

Section 15. Filing of Charges and Schedules: The Lessee shall at all times during the term hereof keep on file with the City Clerk of Coeur d'Alene a current schedule of its hours of operation and charges to the public.

Section 16. Interference With Use By Other Lessees: The Lessee shall not hamper or interfere with the use of the dock or other moorage spaces leased by the Lessor to other lessees.

Section 17. Removal in Emergency: Should it appear to the Lessor that because of flooding or other danger, the property of the Lessor is endangered by the mooring of watercraft, the Lessee shall, immediately after receiving notice, remove the watercraft from the leased premises until the danger has ceased as determined by Lessor.

Section 18. Other Laws: Lessee agrees it shall comply with all local, state, and federal laws, statutes, rules and regulations, including agency rules and regulations, that may apply to Lessee's use of the leased premises.

Section 19. Parking: The parties recognize that the City is involved in a process of developing a downtown properties plan that may modify, move or eliminate some parking in the present downtown public parking lots. Lessee acknowledges and agrees that this may occur and may effect the parking areas presently used by Lessee's customers. In the event of said occurrence Lessee hereby releases, holds harmless Lessor and waives any claim whatsoever Lessee may have against the City its employees, agents, elected and appointed officials in the event parking is modified.

Section 20. Default: In the event the Lessee fails, neglects, or refuses to perform any covenant or condition required of Lessee herein, that Lessor may terminate this lease and reenter and retake possession of the leased space, retaining any and all payments made by the Lessee as liquidated damages, or the Lessor may, at its option, enforce the specific performance of the terms hereof, or take such other recourse as may be open to it in law or in equity. In any of such events, the Lessee agrees to pay all expenses, including a reasonable attorney's fee, in any suit or action brought by the Lessor.





On this 20<sup>th</sup> day of November, 2012, before me, a Notary Public, personally appeared **Sandi Bloem and Susan K. Weathers**, known to me to be the Mayor and City Clerk, respectively, of the **City of Coeur d'Alene** and the persons who executed the foregoing instrument and acknowledged to me that said City of Coeur d'Alene executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

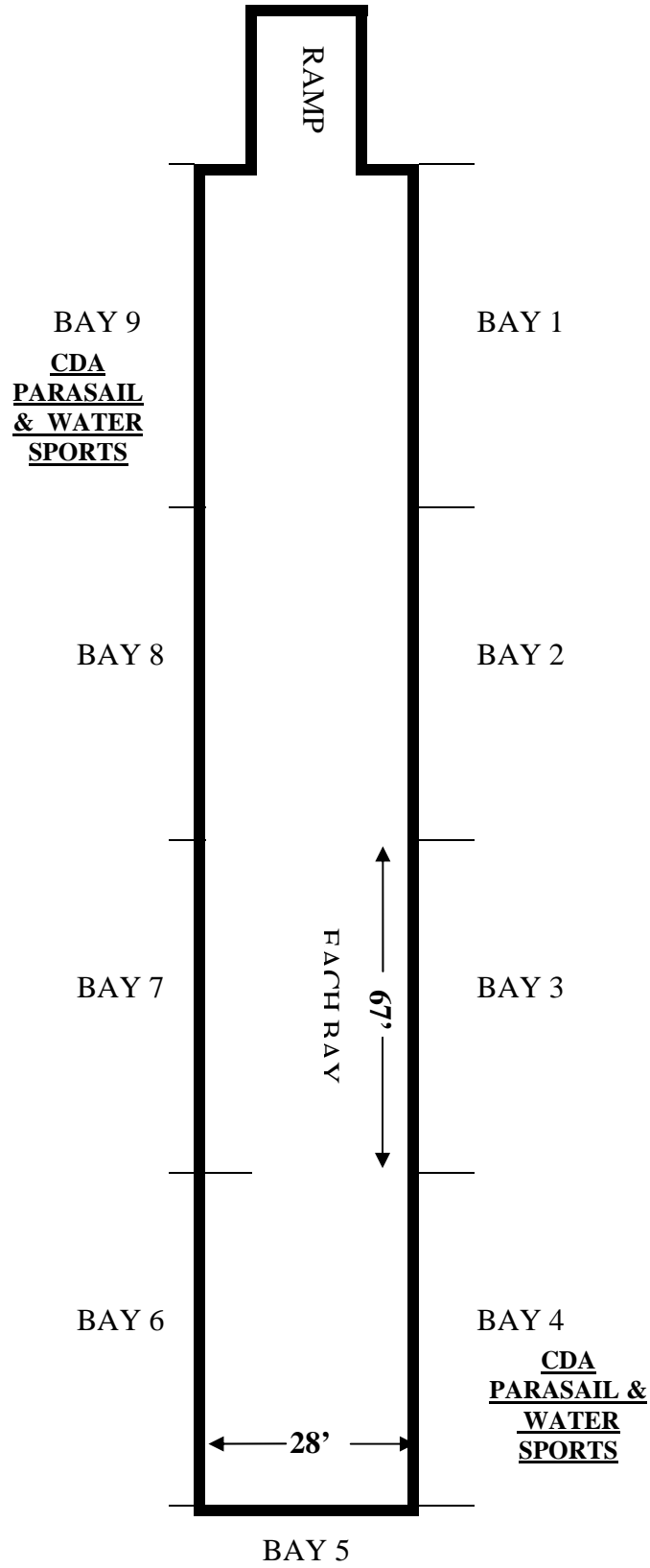
STATE OF IDAHO    )  
                                  ) ss.  
County of Kootenai    )

On this \_\_\_\_\_ day of November, 2012, before me, a Notary Public, personally appeared **BENJAMIN C. RODRIGUEZ AND RUTHIE RODRIGUEZ**, known to me to be the owners of **COEUR D ALENE PARASAIL & WATERSPORTS, INC.**, and the persons whose names are subscribed to the within instrument and acknowledged that such corporation executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

Exhibit "A"



**PARKS AND RECREATION COMMISSION  
STAFF REPORT**

**Date:** October 22<sup>nd</sup>, 2012  
**From:** Doug Eastwood, Parks Director  
**SUBJECT:** **Lake CDA Cruises Agreement Renewal** *(Council Action Required)*

---

**DECISION POINT:**

Extend the Lake CDA Cruises agreement.

**HISTORY:**

Lake CDA Cruises has been leasing Bays 1, 2, 3, 6, 7 and 8 on the commercial dock for over 16 years.

**FINANCIAL ANALYSIS:**

The rental amounts, as per the lease agreements, are increased each year based on the current CPI (Consumer's Price Index). The lease will be \$ 37,330.86, based on a monthly rental of \$ 888.83 per month, per bay, from April 1<sup>st</sup> to October 31<sup>st</sup>, and \$ 746.62, which is the two percent (2%) Department of Lands fee. Lessee is required to report any use of said dock during the period of November 1 to March 31 providing compensation to the Lessor on a per use basis.

**PERFORMANCE ANALYSIS:**

Lake CDA Cruises currently has a 4-year lease agreement with the city that will expire on October 31<sup>st</sup>, 2013. Section 3 of this agreement allows them to submit a written request for a two-year extension of their lease. Lake CDA Cruises has submitted a letter requesting this two-year extension with a new expiration date of March 31, 2016.

**DECISION POINT / RECOMMENDATION:**

Extend the lease agreement with Lake CDA Cruises.

LEASE AGREEMENT

THIS LEASE, entered into this 20<sup>th</sup> day of November, 2012, by and between the **CITY OF COEUR D'ALENE**, a municipal corporation organized and existing under the laws of the state of Idaho, whose address is 710 E. Mullan Avenue, Coeur d'Alene Idaho 83814, hereinafter referred to as the "Lessor," and **LAKE COEUR D'ALENE CRUISES, INC.**, an Idaho Corporation with its principle place of business at P O Box 6200, Coeur d'Alene, Idaho 83816-1937, hereinafter referred to as the "Lessee,"

**WITNESSETH:**

That the Lessor, for and in consideration of the rents and covenants hereinafter mentioned to be paid and performed by the Lessee, does hereby lease and let unto the Lessee the following described moorage along the City Dock between Independence Point and Hagadone Hospitality Company property, to wit:

THOSE SPACES DESCRIBED AS BAY 1, BAY 2, AND BAY 3  
ON THE EAST SIDE OF THE CITY DOCK; AND

THOSE SPACES DESCRIBED AS BAY 6, BAY 7, AND BAY 8  
ON THE WEST SIDE OF THE CITY DOCK.

Said bays are depicted on the attached drawing identified as Exhibit "A," and by this reference incorporated herein.

Section 1. Term: The term of this lease shall be two (2) years commencing April 1, 2014, and ending March 31, 2016. Any property left beyond March 31, 2016, will be impounded and returned to the Lessee only upon payment of reasonable impounding costs, fees, and storage. All rent is to be paid in advance as described below.

Section 2. Rental: The Lessee agrees to pay as rental for the right of such moorage space and the use of said portion of said dock, for the first year of the lease, the sum of Sixty Five Thousand Two Hundred Seventy-Five and 68/100 (\$ 65,275.68), based on a monthly rental of Eight Hundred Eighty Eight and 83/100 Dollars (\$ 888.83) per month per bay and One Thousand Two Hundred Seventy-Nine and 92/100 (\$1,279.92), the 2% Department of Lands fee as identified in Section 4, payable as follows: Thirty Eight Thousand Seventy-Seven and 48/100 Dollars (\$38,077.48) payable on April 1, 2014, for the period of April 1, 2014, through October 31, 2014, this includes Seven Hundred Forty-Six and 62/100 Dollars (\$746.62), the 2% Department of Lands fee; and Twenty Seven Thousand One Hundred Ninety-Eight and 20/100 Dollars (\$ 27,198.20), payable on or before November 1, 2014, for the period of November 1, 2014, through March 31, 2015, this includes Five Hundred Thirty-Three and 30/100 Dollars (\$533.30), the 2% Department of Lands fee. Payments for rental for each subsequent year shall be made in advance of April 1 for the period of April 1 through October 31 for that year. Lessee is required to report any use of said dock during the period of November 1 to March 31 providing compensation to the Lessor on a per use basis. Annual fee increases will be based on the Consumer Price Index (CPI) Western.

PROVIDED HOWEVER, the Lessee may at its option remove its property and vacate the leased space prior to November 1 of any year, in which event rental for the months during which such space is not used between November 1 and March 31 will not be charged if the Lessee has, prior to November 1, certified in writing to the City Clerk that the space has been so vacated. In such event, City will utilize the bay(s) as it deems in the City's best interest.

Section 3. Renegotiation: Lessee may request in writing a two (2) year extension of this agreement for the period from April 1, 2016, to March 31, 2018, by submitting to Lessor a written request for extension after April 1, 2015, and prior to September 1, 2015. Upon receipt of such request, the Lessor will consider whether it will grant an additional two (2) year extension and if so, the parties may mutually renegotiate terms applicable to said extension. Such request can be made, in writing, in each succeeding even year between the dates of April 1 and November 1.

If the parties are unable to negotiate terms mutually agreeable to both parties within sixty (60) days of the date of receipt of the request from Lessee for an extension of the original agreement or extension of the extended agreement, then no extension shall occur and the lease shall expire according to previously agreed upon terms.

Section 4. Additional Rental: The State of Idaho Land Board has initiated a fee or other charge against the Lessor, during the term of this lease, for maintenance, operation, placement, and use of the City Dock, the Lessee shall pay to the Lessor its proportionate share of such rental or fee which for the first year of this lease is \$1,279.92 or 2% of the annual fee. This fee is included in Section 2. Should the State of Idaho charge any other or additional fee, Lessee shall be responsible for a proportionate share.

Section 5. Utilities: The Lessee agrees to pay all electrical services and other utility costs incurred at said dock and attributed to Lessee's operation pursuant to Section 11, entitled "Use of Leased Premises."

Section 6. Maintenance: The lessee is expected not to conduct any activity, or operate equipment in any manner not consistent with generally accepted marina boating practices that could cause damage to the City Dock, including but not limited to decking, railings, pilings, walkways, and float logs. To this end the Lessee agrees to promptly repair any damage done to the City Dock, including but not limited to decking, railings, pilings, walkways, and float logs, caused by the Lessee, Lessee's employees, agents, and/or customers, and caused by Lessee's boats and/or equipment. Lessee further agrees at its sole cost, to promptly repair any damage done to the City's Third Street Seawall and Third Street Seawall Docks, including but not limited to decking, railings, pilings, walkways, and float logs, caused by the Lessee, Lessee's employees, agents, and customers, and/or caused by Lessee's boats and/or equipment and to promptly notify the City Parks Director of any such action whether to the City Dock, the Third Street Seawall or Third Street Seawall Docks. A drawing depicting the Third Street Seawall and Third Street Seawall Docks is attached hereto as Exhibit "B" is incorporated herein. In the event a City dock reconstruction or modification project would reasonably impair Lessee from proceeding promptly with repairs, Lessee shall undertake and complete repairs required by this Section within a reasonable time after the City dock reconstruction or modification project is complete.

Section 7. Improvements or Construction: The Lessee shall not construct anything on or about said dock without the written consent of the Parks Director. The Lessee agrees that City has the right to reconstruct and modify, including expansion of the dock, at any time during the term of the Lease. Lessor however, agrees to make reasonable efforts to not make such modification between May 1 and August 31. Lessee further agrees that it shall have no claim against Lessor for any inconvenience or lost income that may result from reconstruction, modification, or expansion of the dock.

Section 8. Adjustments: The parties agree the rental and utility payments required under Section 2 entitled "Rental" and Section 5 entitled "Utilities" shall be adjusted on a pro rated basis for each day a City's reconstruction or modification project makes the dock inaccessible to Lessee's patrons or invitees.

Section 9. Signs: Except as set forth in this section and in Section 11, entitled "Souvenir Sales," no signs for advertising purposes or otherwise shall be attached to the dock or affixed in the area adjacent to the dock, except a small sign designating the owner or the name of the boat and its location, which sign must be approved by the Parks Director and be in conformance with the Municipal Sign Code.

Section 10. Alcoholic Beverages: The Lessee shall make every reasonable effort to not permit any person to debark from the watercraft to the City Dock with any opened, sealed, or unsealed container of any alcoholic beverage.

Section 11. Souvenir Sales: The Lessee may sell from the dock non-food items directly related to its business, with the following conditions. The only items that may be sold are hats, t-shirts, sweatshirts, mugs, drinking cups, bumper stickers, and pennants provided such items either bear the Lessee vendor's logo or some other mark indicating a relation to the Lessee vendor's business. Provided, however, that sales and display of the items are to be confined to the interior of their respective booths, which booths and location must be approved in writing by the Parks Director prior to placement. Signs advertising the items for sale must be approved by the Parks Director and be in conformance with the Municipal Sign Code. The City reserves the right to direct Lessee to immediately cease the sale of souvenir items if in the City's sole discretion the continued sale of souvenir items creates an unsafe condition upon the City's dock. In such event, Lessee shall have no claim for damages against Lessor.

Section 12. Use of Leased Premises: It is understood and agreed that the Lessee will use the leased premises only for the moorage of the Mish-an-Nock, the Osprey, the Coeur d'Alene, the Kootenai, and the Spirit of Coeur d'Alene for hire, and the loading and/or unloading of said craft along with limited souvenir sales permitted in Section 11, entitled "Souvenir Sales." The manner of moorage of the watercraft shall be approved by the Lessor's Parks Director. It is further understood and agreed that the general public shall at all times be invited to patronize the Lessee and shall have free access to and from the dock and the use thereof without charge by the Lessee. Due to increased water activity on the 4<sup>th</sup> of July, access to the dock will be restricted for commercial activity from 6:00 p.m. to the following morning.

Section 13. Liability: The Lessee covenants and agrees to indemnify, defend and hold the Lessor harmless from any and all demands, loss or liability for any injury or death occurring to any person or persons or for any damage to any property resulting from the business activities and operation of the Lessee in the use and possession of the leased premises pursuant to this Agreement.

The Lessee does further agree that it shall remedy any damage caused to the dock or docks which results from any acts of the Lessee, or the agents, employees, customers, patrons or passengers of the Lessee.

The Lessee shall not be liable for any loss, damage or injury which results from structural defects or failures of the dock or docks, if the structural defect or failure is not caused by the negligent acts of the Lessee, the agents, employees, customers, patrons or passengers of the Lessee.

The Lessee does agree that any structural defect that comes to the attention of the Lessee as relates to the leased property will be reported to the Lessor.

The Lessee does further agree that as relates to its use of the dock or docks for the purposes of loading or unloading passengers, it shall maintain reasonable inspection of the premises and shall take appropriate action to prevent their agents, employees, patrons or passengers from entering upon unsafe or defective conditions on the dock or docks of which it has notice, or from which a defective condition is readily apparent.

The Lessor shall have the right at all times during the Lease term to maintain inspection of the premises.

The Lessee and Lessor do acknowledge that the Lessee's rights to the use of the dock or docks is in common with other Lessees, including such other Lessees having passengers, patrons or guests on or about the leased premises. The Lessee shall have no liability for any injury to or death of any person or persons or from any damage to the premises which results from or is occasioned by other Lessees' operations and business activities.

Section 14. Insurance: The Lessee does agree that it shall procure, at its cost and expense and maintain in full force and effect, during the term of the Lease, a Policy of Liability Insurance insuring against loss for personal injury, death, or property damage with limits of not less than \$1,000,000.

The Lessor shall be endorsed on the Contract of Insurance as an Additional Named Insured. A Certificate of Endorsement of the Lessor as an Additional Named Insured under the insurance coverage to be procured by the Lessee shall be issued and shall be re-issued upon the annual renewal of the Insurance Policy and shall provide at least thirty (30) days written notice to Lessor prior to cancellation of the policy.

No coverage shall be afforded to the Lessor by the Lessee or its Insurance Company that goes beyond the obligation of the liability of the Lessee as are defined and outlined in Section 13 of this Lease Agreement.

The Lessee shall further make available to the Lessor those provisions of the Insurance Policy that would have bearing upon the terms, coverages, exclusions and conditions as relate to the rights of the Lessor as an Additional Named Insured. No entitlement shall exist in favor of the Lessor to obtain, by request or otherwise, any information from or about the Contract of Insurance that relates to other insured activities of the Lessee; other properties that are covered by such insurance; or any of the economics thereof; including premium payments, reports, reports on losses, or information relating to claims, excepting those claims arising pursuant to the activity of the Lessee under this Lease Agreement, for which the Lessor is to be protected as an Additional Named Insured. The Lessor shall be entitled to obtain a Declaration Sheet of coverage limits of the insurance to show compliance with the limits of insurance to be maintained by the Lessor.

Section 15. Assignability: Lessee shall not assign the lease or sublet the bay, or any part thereof, during the term hereof, without first having obtained the written consent of the Lessor to do so.

Section 16. Filing of Charges and Schedules: The lessee shall at all times during the term hereof keep on file with the City Clerk of Coeur d'Alene and City of Coeur d'Alene Parks Department a current schedule of its hours of operation and charges to the public as well as the maximum number of passengers anticipated for each departure. Additionally the lessee will provide schedules to the Clerk and the Parks Department for all special cruises that may not be part of their aforementioned cruise season. The lessee will notify the City of Coeur d'Alene immediately of any changes to all schedules.

Section 17: Operational Procedures: The lessee shall at all times during loading and unloading of passengers from the vessels onto the dock, monitor the dock for proper floatation and the allowable tolerance of the freeboard, which will be identified with a red tag/pin affixed to the dock cross member. The number of passengers will need to be distributed evenly to keep the dock floatation balanced at all times. The allowable number of vessels moored at the dock at one time for loading and unloading of passengers is four. The lessee will provide staff to manage passengers for the larger cruises they may have. Safety procedures for loading and unloading of passengers shall include but not be limited to the following: Use of barricades to identify boarding lines. Post a deckhand at each cruise boat, this deckhand will arrange and control the boarding line and the distribution of the passengers. Provide security to prevent over crowding on the dock. Post security at the entrance to the dock who will not allow more than the weight capacity of passengers at one time onto the dock to keep the dock freeboard below the pin affixed to the dock cross member; this security will maintain an orderly line of passengers for the cruise boats while maintaining access to the other facilities on the dock.

Section 18. Parking: The parties recognize that the city is involved in a process of developing a downtown properties plan that may modify, move or eliminate some parking in the present downtown public parking lots. Lessee acknowledges and agrees that this may occur and may effect the parking areas presently used by Lessee's customers. In the event of said occurrence Lessee hereby releases, holds harmless Lessor and waives any claim whatsoever Lessee may have against the city its employees, agents, elected and appointed officials in the event parking is modified.



Section 19. Removal in Emergency: Should it appear to the Lessor that because of flooding or other danger, the property of the Lessor is endangered by the mooring of watercraft, the Lessee shall, immediately after receiving notice, remove the watercraft from the leased premises until the danger has ceased as determined by Lessor.

Section 20. Other Laws: Lessee agrees it shall comply with all local, state, and federal laws, statutes, rules and regulations, including agency rules and regulations, that may apply to Lessee's use of the leased premises.

Section 21. Default: In the event the Lessee fails, neglects, or refuses to perform any covenant or condition required of Lessee herein, that Lessor may terminate this lease and reenter and retake possession of the leased space, retaining any and all payments made by the Lessee as liquidated damages, or the Lessor may, at its option, enforce the specific performance of the terms hereof, or take such other recourse as may be open to it in law or in equity. In any of such events, the Lessee agrees to pay all expenses, including a reasonable attorney's fee, in any suit or action brought by the Lessor.

Lessee further agrees, in the event of default, that Lessor may impound property moored at or on the dock and store the same at Lessee's expense at a location chosen by Lessor.

Section 22. Notice: Provided, however, that before declaring such default, the Lessor shall notify the Lessee in writing of the particulars in which it deems the Lessee to be in default, and the Lessee shall have seven (7) days from the time such written notice has been placed in the United States Mail addressed to the Lessee at the last address the Lessee has left with the Lessor, with proper postage affixed, within which to remedy the default. Any notice required herein to be given to City shall be written and deemed received by City when personally delivered to the office of the City Clerk, 710 Mullan Avenue, Coeur d'Alene, Idaho 83814. Any notice required herein to be given to Lessee shall be written and deemed received by Lessee when addressed to P.O. Box 7200, Coeur d'Alene, Idaho 83816-1941, and deposited in the United States mail with proper postage affixed thereto. In lieu of service by mail, a notice of default or of termination may be served in the manner provided for the service of process under the Idaho Rules of Civil Procedure, Rule 5(b).

Section 23. Lessor's Option to Terminate Lease: The Lessor may at any time after ten (10) day's written notice terminate this lease, retake possession of the leased space upon payment to the Lessee of the prorated, unearned portion of the lease payment. The notice of the exercise by the Lessor of its option to terminate the lease will identify any infraction in this agreement that causes termination, or the city may terminate the agreement for construction, access, or other needs or uses of said lease site.

Section 24. Time of the Essence: Time is of the essence of this agreement.

The terms and provisions hereof shall extend to and be binding upon the heirs, executors, administrators, and assigns of the respective parties.

IN WITNESS WHEREOF, the Lessor has caused this lease to be executed by its Mayor and attested by its City Clerk, and the corporate seal hereunto affixed, and the Lessee has signed the same, the day and year first above written.

LESSOR:  
CITY OF COEUR D'ALENE

LESSEE:  
LAKE COEUR D'ALENE CRUISES, INC.

By: \_\_\_\_\_  
Sandi Bloem, Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Susan K. Weathers, City Clerk



Exhibit "A"

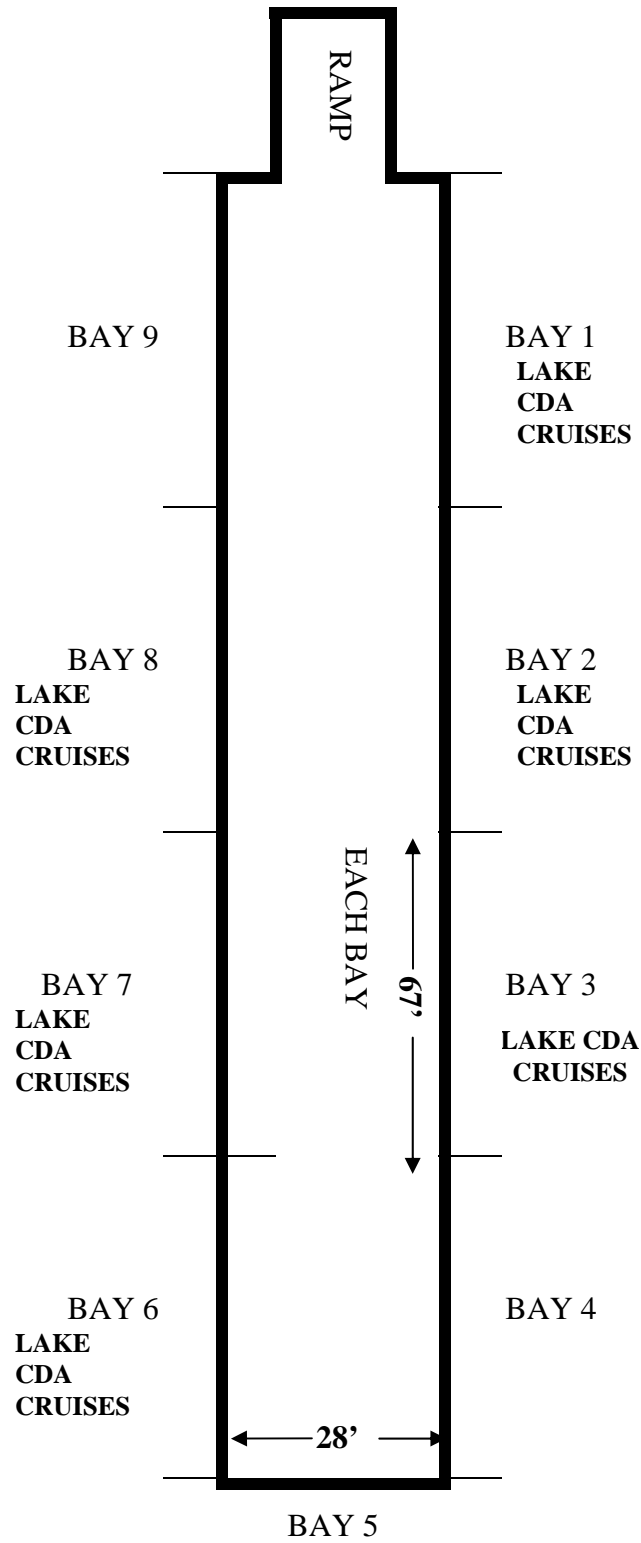
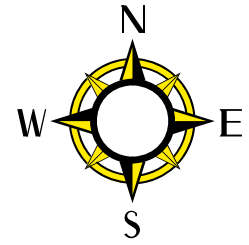
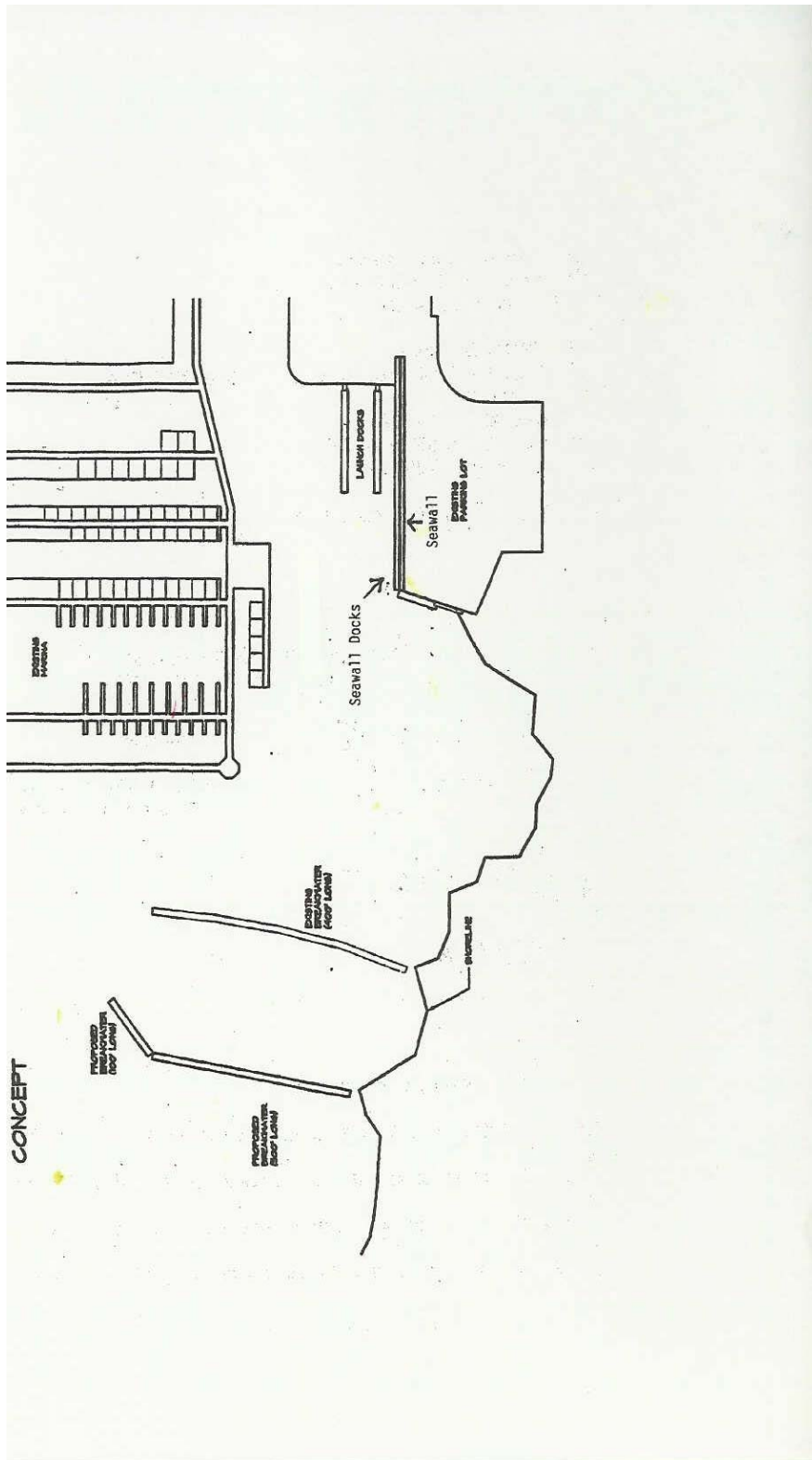


Exhibit "B"



## STAFF REPORT

October 22, 2012

**To: General Services Committee**

**From: Doug Eastwood, Parks Director**

**RE: EVENT AGREEMENTS**

---

**Decision Point:** Enter into a three year agreement with the Panhandle Kiwanis Club for the Taste of the Coeur d'Alene's event during the first weekend in August and the Panhandle Parks Foundation for a new festival event over Labor Day Weekend.

**History:** The Taste of the Coeur d'Alene's event has been held in the City Park for the past 23 years on a year-by-year basis and first come first serve basis. Panhandle Kiwanis requested a three year agreement to assure the dates and times of the annual event. The agreement would be re-newable at the end of the second year. The Panhandle Parks Foundation is requesting an agreement to conduct a festival type event at McEuen Park beginning in 2014 when the new park will be opened. They are also requesting to begin the festival event in 2013 and hold the first year event in the City Park.

**Financial Analysis:** Both groups will pay the city for use of the parks by fees established per resolution. The fees cover booth space including vendors and concessions. Overtime costs are usually associated with special events and those costs are also paid to the city by the event sponsor. The event(s) cover all costs associated with the event.

**Performance Analysis:** The Panhandle Kiwanis Club purchased the Taste of the Coeur d'Alene's event from the Festivals Committee approximately 4 years ago. The organizers of the 'Taste' event moved to Arizona and chose not to continue with the event. This event is a favorite amongst the locals and visitors and occurs at the same time as the Art on the Green and the Downtown Street Fair. The Panhandle Parks Foundation is looking to conduct an annual event over Labor Day Weekend that will have a similar attendance at the end of the summer season.

**Decision Point:** Enter into two – three years agreements; one with the Panhandle Kiwanis Club and one with the Panhandle Parks Foundation for special events that will occur on the first weekend in August and over Labor Day weekend respectively.

## LEASE AGREEMENT

THIS CONTRACT, made and entered into this 20<sup>th</sup> day of November, 2012, between the **CITY OF COEUR D'ALENE**, Kootenai County, Idaho, a municipal corporation duly organized and existing under the laws of the State of Idaho, hereinafter called "City," and **PANHANDLE KIWANIS** with its principal place of business at \_\_\_\_\_, Coeur d'Alene, Idaho \_\_\_\_\_ hereinafter called "KIWANIS,"

### WITNESSETH:

THAT, WHEREAS, Kiwanis has been operating and managing the Taste of the Coeur d'Alene's event for the past four years. They purchased the event from the Coeur d'Alene Festivals Committee in 2009. The Taste of the Coeur d'Alene's has a long, successful history, approximately 24 years, and is the host/sponsor of Arts and Crafts, food concessions and entertainment at the Coeur d'Alene City Park the first weekend in August (Thursday, Friday, Saturday and Sunday with Thursday being a set-up day). This agreement would be for 2013, 2014 and 2015 and renewable for three years at the conclusion of the 2014 season by request of Kiwanis.

NOW, THEREFORE, IT IS AGREED, that for and in consideration of the covenants and agreements set forth herein that, Kiwanis is awarded this agreement according to the terms set forth herein and under the penalties expressed herein.

Section 1.     Definition: For purposes of this agreement the parties agree that the term "employee" shall include all members of Kiwanis and any volunteers that would assist them during the event.

Section 2.     Community Relations: The Kiwanis agree they and their employees will be courteous and informed about the community and will assist with questions from tourists and other park users.

Section 3.     Appropriate Attire: Kiwanis agrees they and their employees must be appropriately dressed in either an approved T-shirt or polo shirt with identifying logo, and approved shorts, if shorts are preferred instead of pants. Approval must be received from the Parks Director. It will not be permissible to operate the event in other apparel without prior written approval.

Section 4.     Staffing: Kiwanis agrees that the event must be staffed by at least six Kiwanis at all times.

Section 5.     Health Permit: Kiwanis agrees that all food vendors are to obtain a health permit as required by law for a food concession that may be part of the event. The permit must be placed in a conspicuous place on the concession. The permit number must correspond to the number on the trailer. The health permit is required to be provided to the City Clerk by July 1, 2013 for the 2013 event and on the same date each succeeding year of the event, Failure to submit the required health permit within the above stated time can result in the City denying Kiwanis permit for the event. The purpose of the permit is to protect the public.

Section 6.     Food: Kiwanis may allow all foods within the scope of the health permit.

Section 7.     Non-food Items: Kiwanis agrees to review all requests for items to be sold at the event and not allow items that may be deemed to be dangerous or illegal.

Section 8.     Refuse: Kiwanis agrees not to dispose of their refuse at a City maintained trash receptacle. Kiwanis will make arrangements with Waste Management for a trash receptacle, or bin, and for pick up of emptying bin when necessary during event. Kiwanis employees/volunteers can empty the trash receptacles or contract with the Parks Department during the permitting process for the purpose of disposing refuse resulting from their event. Kiwanis will do this at their expense. The park and surrounding site must be kept clean at all times.

Section 9.     Hold Harmless: Kiwanis understands and agrees that during the term of this agreement that the city or agents of the city may commence projects involving downtown public properties which may result in the city canceling this agreement pursuant to the notice provision in Section 24 below entitled “Lessor's Option to Terminate Agreement.

Section 10.    Waiver: Kiwanis understands that during the term of this agreement, the City may be undertaking repairs to the City’s Park and/or amenities, which may interfere with Kiwanis operation in the park. Kiwanis specifically waive any claim as to lost profits or business while said repairs are undertaken.

Section 11.    Negligent or Wrongful Act: Kiwanis agrees to indemnify and hold harmless the City from any and all liability, loss or damage which the City may suffer arising out of, or in connection with the negligent or wrongful acts, errors and omissions of Kiwanis, their agents, or employees. Kiwanis further agrees, at Kiwanis cost, to defend the City against all claims arising out of this agreement, including any claims resulting from the operation of Kiwanis event or in connection with the negligent or wrongful acts, errors and omissions of Kiwanis, their agents or employees.

Section 12.    Site Specifications: Kiwanis agrees to the following site specifications,

- A. Booth size: 10 ft. X 10 ft. for arts and craft booths
- B. Heat source: propane or whisper quiet generator.
- C. Electricity is available but must be verified by Parks Department 30 days prior to event.
- D. Cooling source: battery, ice, propane, or whisper quiet generator
- E. All food concessions must be self-contained. Ice chests, canisters, etc. cannot be stored next to cart.
- F. The concessions must be kept clean throughout the event.
- G. Food Concession booths size is 10 ft. X 20 ft.



Section 13. Term: The City shall grant an event permit to Kiwanis for the first weekend in August to include Thursday, Friday Saturday and Sunday for the event to be held in 2013, 2014, 2015.

Section 14. Consideration: Kiwanis shall in consideration for the permit to operate and maintain said event at the said location, shall pay the Parks Department the fees set by resolution for such events. The fees must be paid in full within 30 days after the event each year.

Section 15. City Ordinances: Kiwanis shall abide by all City Ordinances and resolutions, included but not limited to Municipal Code Chapter 4.05; Parks and Public Property.

Section 16. Fire Protection: All tents, canopies or membrane structures must be certified flame resistant where food is being prepared and all food vendors must have a fire extinguisher and comply with the Coeur d'Alene Fire Department Permit for Temporary Tents and other Membrane Structures. A \$ 100.00 Inspection fee will be charged to the sponsor for booth inspections, including food and non-food booths.

Section 17. Glass Containers: Kiwanis agrees not to dispense drinks in glass containers.

Section 18. Violation of Regulations: Kiwanis agrees any violation of regulations, contract, ordinance, or any evidence of collusion may result in criminal prosecution and/or in the revocation of the permit, forfeitures of the full consideration, and Kiwanis may not be allowed to host an event or resubmit a proposal for a period of three (3) years.

Section 19. Non-transferable: Kiwanis also agrees and understands this agreement cannot be transferred to another host/sponsor without permission of the City.

Section 20. Parking: Kiwanis agrees to park in lawfully designated parking spaces neither Kiwanis nor their agent (s) shall park vehicles adjacent to the concessions, arts and craft booths or entertainment areas for longer than thirty (30) minutes. Failure to comply with this provision shall be considered a material breach of this agreement.

Section 21. Event Information: Kiwanis will submit the following information to the CDA Parks Department 30 days prior to event; number of arts and craft vendors, names, addresses and phone numbers, number of food vendors, with specific needs for power, including vendors names, addresses and phone numbers, names, addresses and phone numbers or entertainers and hours of entertainment. Kiwanis agrees it will meet with the Parks Department 60 days prior to an event to review access, site layout, fee structure and any potential changes in the event venue. The Kiwanis will meet with the Parks Department one week before the event to review final details.

Section 22. Lessor's Option to Terminate Lease: The Lessor may at any time after ten (10) day's written notice terminate this lease. The notice of the exercise by the Lessor of its option to terminate the lease for no cause shall be given in the same manner as notice of termination in case of default.

Section 23. Forfeiture of Permit: It is understood that time is of the essence and should Kiwanis fail to perform all of the covenants herein required of them, the City may declare the permit

forfeited. However, that before declaring such forfeiture, the City shall notify Kiwanis in writing of the particulars in which the City deems Kiwanis to be in default and Kiwanis will have three (3) days to remedy the default.

Section 24. Notice: Any notice including notice of default resulting from failure to perform shall be made by placing the written particulars in the United States Mail addressed to Kiwanis at the address above, with proper postage affixed. Any notice required herein to be given to City shall be written and deemed received by City when personally delivered to the office of the City Clerk, 710 Mullan Avenue, Coeur d'Alene, Idaho 83814. In lieu of service by mail, a notice of default and/or of termination may be served in the manner provided for the service of process under the Idaho Rules of Civil Procedure, Rule 5(b).

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Coeur d' Alene have executed this contract on behalf of said City, and Kiwanis have caused the same to be signed, the day and year first above written.

CITY:  
CITY OF COEUR D'ALENE  
KOOTENAI COUNTY, IDAHO

LESSEE:  
PANHANDLE KIWANIS

By: \_\_\_\_\_  
Sandi Bloem, Mayor

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Susan K. Weathers, City Clerk

By: \_\_\_\_\_  
Vice President

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this 20<sup>th</sup> day of November, 2012, before me, a Notary Public, personally appeared **Sandi Bloem and Susan K. Weathers**, known to me to be the **Mayor and City Clerk**, respectively, of the **City of Coeur d'Alene** and the persons who executed the foregoing instrument and acknowledged to me that said City of Coeur d'Alene executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

\*\*\*\*\*

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this \_\_\_\_\_ day of November, 2012, before me, a Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, know to me to be the **President and Vice President**, respectively, of the **Panhandle Kiwanis** and the persons who executed the foregoing instrument and acknowledged to me that said Panhandle Kiwanis executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

## LEASE AGREEMENT

THIS CONTRACT, made and entered into this 20<sup>th</sup> day of November, 2012, between the **CITY OF COEUR D'ALENE**, Kootenai County, Idaho, a municipal corporation duly organized and existing under the laws of the State of Idaho, hereinafter called "City," and **PANHANDLE PARKS FOUNDATION** with its principal place of business at \_\_\_\_\_, Coeur d'Alene, Idaho \_\_\_\_\_ hereinafter called "Parks Foundation,"

### WITNESSETH:

THAT, WHEREAS, Parks Foundation have been awarded the contract for a Festival at McEuen Park on Labor Day Weekend beginning 2013. The Parks Foundation and the City understand that McEuen Park may still be under improvement repair during Labor Day 2013 and that the Parks Foundation may hold the event in the CDA City Park at that time and move the event to McEuen Park for Labor Day weekend in 2014 and 2015. The event hosted by the Parks Foundation may include, but not be limited to, Arts and Craft vendors, food vendors and entertainers. The event will be held annually and will allow the Parks Foundation to begin setting up for the event on Thursday prior to Labor Day and the event will be open to the public on Friday, Saturday and Sunday prior to Labor Day.

NOW, THEREFORE, IT IS AGREED, that for and in consideration of the covenants and agreements set forth herein that, Parks Foundation is awarded this agreement according to the terms set forth herein and under the penalties expressed herein.

Section 1.     Definition: For purposes of this agreement the parties agree that the term "employee" shall include board members of the Parks Foundation and any volunteers that would assist them during the event.

Section 2.     Community Relations: The Parks Foundation agrees they and their employees will be courteous and informed about the community and will assist with questions from tourists and other park users.

Section 3.     Appropriate Attire: Parks Foundation agree they and their employees must be appropriately dressed in either an approved T-shirt or polo shirt with identifying logo, and approved shorts, if shorts are preferred instead of pants. Approval must be received from the Parks Director. It will not be permissible to operate the event in other apparel without prior written approval.

Section 4.     Staffing: Parks Foundation agrees that the event must be staffed by at least six employees at all times.

Section 5.     Health Permit: Parks Foundation agrees that all food vendors are to obtain a health permit as required by law for a food concession that may be part of the event. The permit must be placed in a conspicuous place on the concession. The permit number must correspond to the number

on the trailer. The health permit is required to be provided to the City Clerk by August 15, 2013 for the 2013 event and on the same date each succeeding year of the event, Failure to submit the required health permit within the above stated time can result in the City denying Parks Foundation permit for the event. The purpose of the permit is to protect the public.

Section 6.     Food: Parks Foundation may allow all foods within the scope of the health permit.

Section 7.     Non-food Items: Parks Foundation agrees to review all requests for items to be sold at the event and not allow items that may be deemed to be dangerous or illegal.

Section 8.     Refuse: Parks Foundation agrees not to dispose of their refuse at a City maintained trash receptacle. Parks Foundation will make arrangements with Waste Management for a trash receptacle, or bin, and for pick up of emptying bin when necessary during event. Parks Foundation employees/volunteers can empty the trash receptacles or contract with the Parks Department during the permitting process for the purpose of disposing refuse resulting from their event. Parks Foundation will do this at their expense. The park and surrounding site must be kept clean at all times.

Section 9.     Hold Harmless: Parks Foundation shall hold the City harmless and shall give up all claims for any incidental or consequential damages or lost profits during the term of the agreement due to construction projects located in or using McEuen Field (or City Park in 2013). Parks Foundation further understands and agrees that during the term of this agreement that the city or agents of the city may commence projects involving downtown public properties which may result in the city canceling this agreement pursuant to the notice provision in Section 24 below entitled “Lessor's Option to Terminate Agreement.

Section 10.    Waiver: Parks Foundation understands that during the term of this agreement, the City may be undertaking repairs to the City’s Park and/or amenities, which may interfere with Parks Foundation operation in the park. Parks Foundation specifically waives any claim as to lost profits or business while said repairs are undertaken.

Section 11.    Negligent or Wrongful Act: Parks Foundation agrees to indemnify and hold harmless the City from any and all liability, loss or damage which the City may suffer arising out of, or in connection with the negligent or wrongful acts, errors and omissions of Parks Foundation, their agents, or employees. Parks Foundation further agrees, at Parks Foundation cost, to defend the City against all claims arising out of this agreement, including any claims resulting from the operation of Parks Foundation event or in connection with the negligent or wrongful acts, errors and omissions of Parks Foundation, their agents or employees.

Section 12.    Site Specifications: Parks Foundation agrees to the following site specifications,

- A. Booth size: 10 ft. X 10 ft. for arts and craft booths
- B. Heat source: propane or whisper quiet generator.
- C. Electricity is available but must be verified by Parks Department 30 days prior to event.

- D. Cooling source: battery, ice, propane, or whisper quiet generator
- E. All food concessions must be self-contained. Ice chests, canisters, etc. cannot be stored next to cart.
- F. The concessions must be kept clean throughout the event.
- G. Food Concession booths size is 10 ft. X 20 ft.

Section 13. Term: The City shall grant an event permit to Parks Foundation for Labor Day weekend to include the Thursday, Friday Saturday and Sunday prior to Labor Day for the event to be held in 2013, 2014, 2015.

Section 14. Consideration: Parks Foundation shall in consideration for the permit to operate and maintain said event at the said location, shall pay the Parks Department the fees set by resolution for such events. The fees must be paid in full within 30 days after the event each year.

Section 15. City Ordinances: Parks Foundation shall abide by all City Ordinances and resolutions, included but not limited to Municipal Code Chapter 4.05; Parks and Public Property.

Section 16. Fire Protection: All tents, canopies or membrane structures must be certified flame resistant where food is being prepared and all food vendors must have a fire extinguisher and comply with the Coeur d'Alene Fire Department Permit for Temporary Tents and other Membrane Structures. A \$ 100.00 Inspection fee will be charged to the sponsor for booth inspections, including food and non-food booths.

Section: 17. Glass Containers: Parks Foundation agrees not to dispense drinks in glass containers.

Section 18. Violation of Regulations: Parks Foundation agrees any violation of regulations, contract, ordinance, or any evidence of collusion may result in criminal prosecution and/or in the revocation of the permit, forfeitures of the full consideration, and Parks Foundation may not be allowed to host an event or resubmit a proposal for a period of three (3) years.

Section 19. Non-transferable: Parks Foundation also agrees and understands this agreement cannot be transferred to another host/sponsor without permission of the City.

Section 20. Parking: Parks Foundation agrees to park in lawfully designated parking spaces neither Parks Foundation nor their agent (s) shall park vehicles adjacent to the concessions, arts and craft booths or entertainment areas for longer than thirty (30) minutes. Failure to comply with this provision shall be considered a material breach of this agreement.

Section 21. Event Information: Parks Foundation will submit the following information to the Parks Department 30 days prior to event; number of arts and craft vendors, names, addresses and phone numbers, number of food vendors, with specific needs for power, including vendors names, addresses and phone numbers, names, addresses and phone numbers or entertainers and hours of

entertainment. Parks Foundation agrees it will meet with the Parks Department 60 days prior to an event to review access for the vendors, entertainers, etc., site layout, fee structure and any potential changes in the event venue. Access generally relates to vehicle access prior to the event for setting up and taking down. Specific access points will be identified and monitored by the Parks Department so the event does not cause unnecessary damage, wear and tear, to the park. The Parks Foundation will meet with the Parks Department one week before the event to review final details.

Section 22. Lessor's Option to Terminate Lease: The Lessor may at any time after ten (10) day's written notice terminate this lease. The notice of the exercise by the Lessor of its option to terminate the lease for no cause shall be given in the same manner as notice of termination in case of default.

Section 23. Forfeiture of Permit: It is understood that time is of the essence and should Parks Foundation fail to perform all of the covenants herein required of them, the City may declare the permit forfeited. However, that before declaring such forfeiture, the City shall notify Parks Foundation in writing of the particulars in which the City deems Parks Foundation to be in default and Parks Foundation will have three (3) days to remedy the default.

Section 24. Notice: Any notice including notice of default resulting from failure to perform shall be made by placing the written particulars in the United States Mail addressed to Parks Foundation at the address above, with proper postage affixed. Any notice required herein to be given to City shall be written and deemed received by City when personally delivered to the office of the City Clerk, 710 Mullan Avenue, Coeur d'Alene, Idaho 83814. In lieu of service by mail, a notice of default and/or of termination may be served in the manner provided for the service of process under the Idaho Rules of Civil Procedure, Rule 5(b).

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Coeur d' Alene have executed this contract on behalf of said City, and Parks Foundation have caused the same to be signed, the day and year first above written.

CITY:  
CITY OF COEUR D'ALENE  
KOOTENAI COUNTY, IDAHO

LESSEE:  
PANHANDLE PARKS FOUNDATION

By: \_\_\_\_\_  
Sandi Bloem, Mayor

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Susan K. Weathers, City Clerk

By: \_\_\_\_\_  
Vice President

STATE OF IDAHO )

County of Kootenai ) ss.  
County of Kootenai )

On this 20<sup>th</sup> day of November, 2012, before me, a Notary Public, personally appeared **Sandi Bloem and Susan K. Weathers**, known to me to be the **Mayor and City Clerk**, respectively, of the **City of Coeur d'Alene** and the persons who executed the foregoing instrument and acknowledged to me that said City of Coeur d'Alene executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

\*\*\*\*\*

STATE OF IDAHO )  
County of Kootenai ) ss.  
County of Kootenai )

On this \_\_\_\_\_ day of November, 2012, before me, a Notary Public, personally appeared \_\_\_\_\_ and \_\_\_\_\_, know to me to be the **President and Vice President**, respectively, of the **Panhandle Parks Foundation** and the persons who executed the foregoing instrument and acknowledged to me that said Panhandle Parks Foundation executed the same.

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

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My Commission expires: \_\_\_\_\_



# **PUBLIC WORKS COMMITTEE**

## **STAFF REPORT**

**DATE:** November 13, 2012  
**FROM:** Gordon Dobler, Engineering Services Director  
**SUBJECT:** Approval of engineering services contract for Seltice Way

---

### **DECISION POINT**

Staff is requesting authorization to enter into a contract with JUB Engineers for development of preliminary concept and related cost opinions, for improvement of Seltice Way, from Huetter Ave to the bridge west of Riverstone Drive.

### **HISTORY**

In early September, staff meet with Glen Miles from KMPO, Councilwoman Goodlander, and Tony Berns to discuss the possibility of submitting a request for federal funding early next year, to improve Seltice Way, from Huetter to the bridge. Seltice Way was constructed as the original interstate even before Councilman Edinger was born and is in dire need of repair and improvement. The concrete pavement is failing, there are numerous pass-through areas in the median that need to be removed to reduce traffic conflicts, the intersection on Seltice and Atlas is a high accident location that needs to be signalized, and there are no continuous pedestrian or bicycle facilities adjacent to the roadway. The cost to affect these repairs and improvements has put this project beyond the reach of what we could fund through impact fees or general fund dollars, so the ability to obtain outside assistance is critical to its completion.

### **FINANCIAL ANALYSIS**

Project funding could come from several sources, such as federal transportation and safety funds, impact fees, general fund (overlay), and an LID. In addition, the project is within the River District of LCDC and is eligible for funding. We have annexed the majority of the road with adjacent development but there are a few portions that remain outside city limits, therefore the project would be a joint effort with Post Falls Highway district.

The purpose of engaging JUB Engineers at this point is to refine the scope of improvements and potential options for the pavement rehabilitation and then generate cost opinions to be used in the application process.

The cost of their services is \$10,000. The funds would come from Engineering – Professional Services account. This was not a budgeted item so we expect to exceed the budget for this account, which would necessitate a budget amendment.

## **PERFORMANCE ANALYSIS**

Obtaining additional funding is critical to the completion of the improvements on Seltice Way. There is no guarantee that our application would be successful next year, but the expenditure for engineering services at this point is easily justified when you consider that however the project gets funded we need to have the scope of improvements and the related costs identified in order to go forward.

## **RECOMMENDATION**

It is recommended that Council authorize staff to enter into a contract with JUB Engineers for development of preliminary concept and related cost opinions, for improvement of Seltice Way, from Huetter Ave to the bridge west of Riverstone Dr.

## PUBLIC WORKS COMMITTEE STAFF REPORT

**DATE:** November 7, 2012

**FROM:** James Remitz, Utility Project Manager

**SUBJECT:** **Amendment No. 2 - Authorization For Additional Services – 2012 Wastewater Collection System Projects.**

=====

### **DECISION POINT:**

The Council may wish to authorize the performance of additional professional design services under the existing Agreement for Professional Services between J-U-B Engineers, Inc. and the City of Coeur D'Alene, dated February 21, 2012. These additional professional services will provide for the final design and construction support services for the Fernan Court Sewer Replacement Project scheduled for construction in 2013.

### **HISTORY:**

Concept design and site investigations for the Fernan Court Sewer Replacement Project were performed in 2011 and 2012 under the July 2011 contract amendment and the 2012 Agreement dated February 21, 2012. This amendment will modify the 2012 Agreement scope of services to include the final design and construction support services for the construction of a new 8 inch sanitary sewer main within Fernan Lake Road and 16 gravity sewer laterals for residences in the Fernan Lake Terrace Subdivision. (See attached drawing) As part of this amendment, CIPP design and construction support tasks are to be removed from the scope of services in order to utilize the remaining budget surplus from the 2012 Agreement dated February 21, 2012

### **PERFORMANCE ANALYSIS:**

J-U-B Engineers, Inc. has successfully performed similar professional services to the satisfaction of the Coeur D'Alene Wastewater Department.

### **FINANCIAL ANALYSIS:**

Since this amendment utilizes surplus funds from the construction phase services of the 2012 Open Trench projects and unused funds for the CIPP design and construction support tasks, there will be no overall change to the original 2012 Agreement amount dated February 21, 2012. **No additional funding is required.** Sufficient funding is budgeted and available in the Wastewater Operating Fund under account 031-022-4352-7901.

### **RECOMMENDATION:**

Approve the attached Authorization for Additional Services and modified Scope of Services.

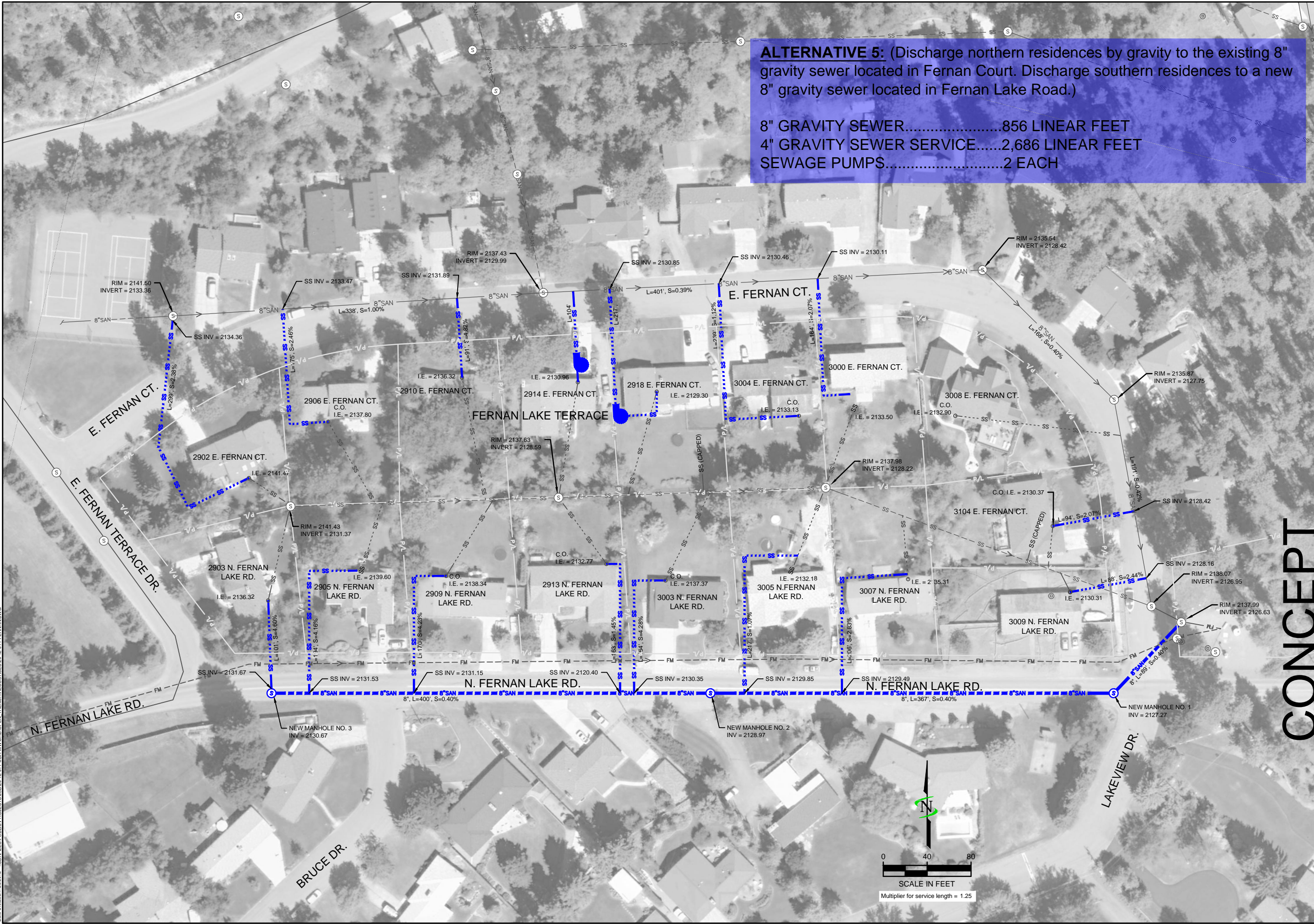


J-U-B ENGINEERS, INC.

J-U-B ENGINEERS, INC.  
7825 Meadowlark Way  
Coeur d'Alene, ID 83815  
Phone: 208.762.8787  
Fax: 208.762.9797  
www.jub.com

**ALTERNATIVE 5:** (Discharge northern residences by gravity to the existing 8" gravity sewer located in Fernan Court. Discharge southern residences to a new 8" gravity sewer located in Fernan Lake Road.)

8" GRAVITY SEWER.....856 LINEAR FEET  
4" GRAVITY SEWER SERVICE.....2,686 LINEAR FEET  
SEWAGE PUMPS.....2 EACH



PRELIMINARY PLANS  
NOT FOR CONSTRUCTION

THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF JUB ENGINEERS, INC. AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF JUB ENGINEERS, INC.

NO.	REVISION	DESCRIPTION	BY	DATE

**CONCEPT**  
CITY OF COEUR D'ALENE  
WASTEWATER UTILITY  
FERNAN COURT SEWER REPLACEMENT  
CONCEPT - ALTERNATIVE NO. 5

FILE : 20-12-011-FERNAN  
JUB PROJ # : 20-12-011  
DRAWN BY : WRH  
DESIGN BY : PMS  
CHECKED BY : PMS  
SCALE : 1" = 40'  
AT FULL SIZE, IF NOT ONE INCH, SCALE ACCORDINGLY  
LAST UPDATED: 7/20/2012  
SHEET NUMBER:

Plot Date: 7/21/2012 1:28 PM Plotted By: Brett Bangler  
Date Created: 7/20/2012 \\CDA\ESS\PUBLIC\PROJECTS\JUB\2012\011\CD\A\W\CA\OPEN\_TRENCH\RESOURCES\20\_12\_011\_FERNAN.DWG



J-U-B ENGINEERS, Inc.
AGREEMENT FOR PROFESSIONAL SERVICES

J-U-B ENGINEERS, INC.

Authorization for Additional Services

CLIENT: City of Coeur d'Alene
Project Name: Wastewater Utility 2012 / 2013 Collection System Projects
J-U-B Project Number: 20-12-011

1. Additional Services. The following additional items of work on the project referenced above have been or will be provided by J-U-B ENGINEERS, Inc. (J-U-B). These Additional Services are a supplement to the scope of services contained in J-U-B's existing Agreement for Professional Services for this Project, dated February 21, 2012. All other TERMS AND CONDITIONS of said Agreement remain in full force and effect.

Additional Services: Provide Final Design and Construction Support services for the Fernan Court Sewer Replacement Project as described in Attachment A-2 Scope of Services.

2. Verbal Authorization by CLIENT, if Applicable. J-U-B was verbally authorized by the CLIENT to provide these Additional Services by:

Jim Remitz Name September 29, 2012 Date

3. Payment for Additional Services. Unless otherwise noted below, J-U-B will provide these Additional Services on a time and materials basis, using J-U-B's standard billing rates or, if applicable, the billing rates established in the initial Agreement for Professional Services.

Other Basis for Payment:

Task 110: Final Design - on a lump sum basis of \$34,100.

- The cost of this work will be covered by unspent funds remaining from work that was removed from the February 21, 2012 Agreement.

Task 120: Contract Bidding and Award, and Construction Administration - on a time and materials basis, using J-U-B's standard billing rates, estimated at \$36,300.

- The cost of this work will be covered by unspent funds remaining from work that was removed from the February 21, 2012 Agreement.

Reference also Attachment B-2 - Fee Breakdown.

4. Schedule of Services. Due to the Additional Services, the Schedule of Services to be performed under the original Agreement for Professional Services is modified as follows:

- Task 110: Preliminary and Final Design - within 80 days of execution of this amendment
Task 120: Contract Bidding and Award, and Construction Administration - schedule dependent on City approval, bidding responses, and contractor's schedules.

Dated this \_\_\_ day of \_\_\_, 2012

CLIENT: City of Coeur d'Alene

J-U-B ENGINEERS, Inc.

By: Project Representative or Authorized Signatory for CLIENT

By: Stephen P. James Project Representative or Authorized Signatory for J-U-B

Print or Type Name and Title

Stephen P. James, Area Manager
Print or Type Name and Title

**ATTACHMENT A-2**

**SCOPE OF SERVICES**

*(Amendment to 2012 Agreement Dated February 21, 2012)*

**City of Coeur d'Alene Wastewater Utility  
2013 Collection System Projects**

---

**TASK 1**

**FERNAN COURT SEWER REPLACEMENT PROJECT -  
FINAL DESIGN AND CONSTRUCTION SUPPORT**

**Background**

Concept design and site investigations for the Fernan Court sewer replacement was performed in 2011 and 2012 under the July 2011 contract amendment and the 2012 contract (additional project background is described in those contracts). Concept design culminated in a technical memorandum issued to the CITY in July 2012 describing five alternatives. Following review of the technical memorandum and holding a public meeting with affected property owners, the CITY selected Alternative No. 5 as the preferred alternative. This scope of work amends the 2012 contract to include final design for a new 8-inch sanitary sewer in Fernan Lake Road and gravity sewer laterals for 16 residences in the Fernan Lake Terrace Subdivision as described in Alternative No. 5 in the July 2012 technical memorandum.

As part of this amendment, CIPP design and construction support tasks are removed from the scope of work to utilize the remaining budget surplus from the 2012 Agreement dated February 21, 2012.

**Objective**

This task includes the following:

- Perform final design for the Fernan Court open trench replacement project. Final design will be based on concept Alternative No. 5 from the July 2012 Technical Memorandum No. 1 Concept Design Summary.
- Provide bidding support, construction administration, and observation for the Fernan Court open trench project.

## Approach

The scope includes site investigation of 16 residences to develop gravity sewer service routing and connection to main sewer lines, survey, subsequent development of final plans and profiles for approximately 860 LF of 8" sewer mainline, and a geotechnical investigation and evaluation of the existing soils near the proposed sewer main alignment in Fernan Lake Road. The final design phase will result in developing plans and specifications for bidding and construction purposes, submittal for CITY review and approval, and final edits based on review comments from the City and IDEQ, as applicable.

The bidding phase will include advertisement, a pre-bid conference, bid opening, and a bid review and summary to the CITY. The construction phase will include a pre-construction meeting between the City, JUB, and the Contractor, a pre-construction neighborhood meeting, contract administration, construction observation, preparation of record drawings, and project close-out.

The approach will be broken into the following subtasks:

- Final Design
- Contract Bidding and Award
- Construction Administration and Observation
- Project Close-out

ENGINEER will provide administrative and engineering services specifically limited to the following:

Task 110 - Final Plans and Preparing Bid Documents (Items 110.33 through 110.48 on the attached Labor-Hour Estimate): Based on CITY selection of Alternative No. 5 from the July 2012 technical memorandum, drawings will be finalized for bidding purposes in 2013. The activities are as follows:

- 1) In the prior agreement, initial field work was completed to identify probable locations and depths of some of the existing gravity service lines. This phase will include additional field work to confirm previously ascertained data and attempt to resolve outstanding unknown data for the 16 residences. It is understood that we will work with City crews to obtain access to residential properties by door-to-door inquiries and verbal request / approval for entry over a two day period. Sewer service locations and elevations will be based primarily on located sewer service clean outs. If clean outs are not located, we will estimate the depth to the sewer service based on the probable elevation of the lowest floor with wastewater service (as determined by information provided by the homeowners).
- 2) Identify a new route for each gravity service line (16 properties total), including connections at the home and sewer main, approximate location on private property,

elevation / grade, and related details. Plans for new service lines will include a plan view with an aerial image, approximate property line locations based on a City-provided assessor's map, new service line invert elevations, and photographs in order to convey the general service line route, utility locations, and nearby surface features for bidding purposes.

- 3) Based on data collected during on-site reviews, identify any residences that may not be serviceable by gravity without mainline modifications or interior plumbing alterations. Modifications to the concept design for the gravity main in the July 2012 technical memorandum are not included in this scope of work. Additionally, since the number, location, and installation requirements of individual grinder pump stations (or ejector pumps) is not known at the time of agreement, design of these components is not included in this scope of services.
- 4) Final design and routing of approximately 860 LF of 8" sewer mainline in Fernan Lake Road with some minor variation from the July 2012 technical memorandum concept design, if necessary, based on confirmation of gravity service line depths and existing water line location.
- 5) In the prior agreement, topographical survey was done with the assumption that the sewer mainline would be replaced in its existing location near the back lot lines of Fernan Lake Terrace Subdivision. Concept Design Alternative No. 5 in the July 2012 technical memorandum abandons the existing sewer in place and reroutes service laterals to main lines located in Fernan Court and Fernan Lake Road. Therefore, additional topographical survey will be collected for the new sewer mainline in Fernan Lake Road and for rerouting the gravity service lines. Utility location information in Fernan Lake Road will be collected as marked by the utility owners based on the local Call Before You Dig (request to be made by J-U-B). Utilities on the private residences will be marked by a subconsultant only for the areas affected by the gravity service line routing; locating will be completed in accordance with industry-standard accuracy of 2 feet  $\pm$  horizontally. Any available, found property pins within the project area will also be collected. Property lines will be approximated using the CITY's GIS database and the County Assessor's Map; a boundary survey is not included in this scope.
- 6) Develop one set of bid documents, technical specifications, and final plans for competitive bidding in 2013. The Contract Documents will be based on ISPWC 2008 edition with City modifications and with supplemental technical specifications as required for the project.
- 7) Utilizing Strata as a geotechnical subconsultant, conduct a geotechnical evaluation of the soil along the new sanitary sewer alignment in Fernan Lake Road.
  - a) Low impact drilling methods will be used to take three borings to a depth of between 15 and 25 feet.
  - b) Depending on preliminary findings from these borings, additional borings may be recommended by ENGINEER to determine the extent of unsuitable material, if encountered, throughout the proposed sewer alignment; however, additional borings



and investigation will not be completed without authorization from the CITY for additional services.

- c) Following completion of the borings, prepare a letter report summarizing the findings. If unsuitable soils are encountered in configurations that are conducive to simple over excavation procedures, provide recommendations to remove and replace soil to the planned utility elevation.
  - d) In the event unsuitable soil is encountered that may require geotechnical design recommendations beyond simple over excavation procedures, ENGINEER will notify CITY immediately to discuss expanding the scope to include evaluation of mitigation options similar to the geotechnical evaluation performed by Strata in 2011 near the existing sewer alignment.
- 8) Conduct internal QC/QA of the Contract Documents.
  - 9) Provide Engineer's opinion of probable construction cost for the project.
  - 10) Submit five sets of plans, specifications, and contract documents to the CITY Wastewater Utility for final review and approval. Wastewater will distribute the five copies to the City Engineering Department, Water Department, legal department, IDEQ (following a QLPE review), and other departments as CITY deems necessary.
  - 11) Submit one set of plans each to potentially affected utilities (communication, power, gas, etc.) for informational purposes.
  - 12) Incorporate CITY and IDEQ comments (as applicable) and develop final bid sets.
  - 13) Provide 20 sets of final Contract Documents, including half sized plans (11x17), bid forms, contract forms, and technical specifications. Plans shall be used for distribution to CITY departments, regulatory agencies, plan agencies, and interested contractors.

Task 120 - Contract Bidding and Award, and Construction Administration (Items 120.37 through 120.49 on the attached Labor-Hour Estimate): The CITY will advertise and distribute the final Contract Documents for bidding purposes. ENGINEER will perform construction support as noted in J-U-B Standard Exhibit B – Construction Phase Services and as follows:

- 1) Conduct one pre-bid meeting at the CITY office.
- 2) Respond to bidders' questions during the bidding phases, and prepare and issue addenda as required to modify the Bidding Documents.
- 3) Assist in bid openings at CITY Hall, review bids as received, prepare bid summaries, review bids for responsiveness, and issue recommendations to the CITY regarding the responsiveness of the bids.
- 4) Prepare notices of award, agreements, and notices to proceed for review, approval, and distribution by the CITY, and assist in contract award.
- 5) As required by the CITY, provide administrative and observation support during construction as needed for the projects.

- a) Conduct one pre-construction conference with the CITY, Contractor(s), and other interested parties.
- b) Conduct one public meeting prior to construction with the CITY, Contractor(s), property owners affected by construction, and other interested parties. Upon City request, prepare exhibits and an informational flyer, as reviewed and approved by CITY, for use and distribution at the public meeting. CITY will prepare and distribute invitations to the public meeting.
- c) Interpret the plans and specifications during construction in accordance with the terms of the ISPWC General Conditions. Make recommendations to the CITY concerning contractor requests to deviate from the plans and specifications.
- d) Provide administration of the construction contract as provided in the ISPWC General Conditions of the Contract Documents, including submittal review, requests for information, change order requests, etc.
- e) Provide construction observation and management services as necessary during construction. Specific activities include the following:
  - i) Construction staking, observation of trenching, bedding, pipe installation, sewer main construction and connections, sewer service construction (part time basis only), backfill of main lines, observation of quality assurance testing performed by the contractor(s), final video reviews, and final surface repair. The construction phase for all reaches is assumed to occur over a continuous six week period.
- f) Review contractor progress and pay requests, and prepare recommendations to the CITY.
- g) Schedule a final walk-through to be attended by the CITY, ENGINEER, and Contractor(s), and develop a tentative list of items to complete the contractor's work. Once the contractor issues notice that the work is complete, conduct a subsequent walk-through to review status. Review final quantities and pay request from the Contractors. Submit final payment recommendations to the CITY for approval.
- h) Provide five complete sets of hard copy record drawings (per project) for CITY records.

Task 130 – Additional Services: The Services outlined hereinafter are not currently included in the scope of work and shall only be provided by the ENGINEER when requested, and authorized in writing by the CITY. Such authorization shall also state the negotiated amount and method of compensation by the CITY. When authorized, the ENGINEER will:

- 1) Strata to perform additional soil exploration borings in addition to the three borings scoped above if determined necessary to better determine the location of unsuitable material in Fernan Lake Road, if encountered.
- 2) In the event unsuitable soil is encountered that may require geotechnical design recommendations beyond simple over excavation procedures, ENGINEER will notify CITY

immediately to discuss expanding the scope to include evaluation of mitigation options similar to the geotechnical evaluation performed by Strata in 2011 near the existing sewer alignment.

- 3) Design and plan and specification development to incorporate specialized construction methods or materials as may be recommended in a geotechnical engineering report if highly unsuitable soil conditions are discovered from soil investigations.
- 4) Significant re-design or updates to the plans for changes to the concept sewer main alignment in Fernan Lake Road relative to the general alignment identified in concept Alternative No. 5 in the July 2012 technical memorandum.
- 5) Perform design and develop plans and specifications to incorporate residential grinder or ejector pump stations into the project.
- 6) Design and recommendations for interior residential plumbing modifications necessary for gravity sewer service.
- 7) Prepare exhibits and descriptions for CITY's use in acquiring easements.
- 8) Provide additional construction administration services due to delays in construction as a result of contractor's activities, or as requested by CITY, which extend the construction phase beyond the timeframe assumed above.
- 9) Re-design or update the plans and specifications for bidding and construction in subsequent projects or years.
- 10) Perform boundary survey work.
- 11) Assist the CITY in reporting or otherwise managing removal of minor amounts of hazardous waste or petroleum contaminated soils that may be encountered during construction.
- 12) Assist the City with detailed geotechnical investigations and/or structural evaluations required when unexpected sub-surface conditions or structural concerns are encountered during the course of design or construction.
- 13) And other additional services specifically requested by CITY.

## Schedule

The proposed schedule for Task 1 is as follows:

Task	Days
110 – Survey and Utility Locates (start date dependent on lack of snow cover)	20
110 – Final Design (from completion of Survey and Utility Locates)	60
120 – Bidding, Award, and Construction Administration	*
130 – Additional Services	N/A

*\* Dependent on construction schedules developed by the successful bidder(s)*

## Compensation

Compensation for Task 1 will be as detailed in Attachment B-2 – Fee Breakdown and as follows:

- Task 110 – Survey and Final Design: on a Lump Sum basis
- Task 120 – Bidding, Award, and Construction Administration: on a Time and Materials using J-U-B's standard billing rates
- Task 130 – Additional Services: on a Time and Materials using J-U-B's standard billing rates

As part of this amendment, CIPP design and construction support tasks are removed from the scope of work to utilize the remaining budget surplus from the 2012 Agreement dated February 21, 2012. Remaining budget surplus is detailed in the following Budget Summary.

**City of Coeur d'Alene Wastewater Utility  
2012 / 2013 Collection System Projects Budget Summary**

Task	Budgeted Amount	Billings to Date <sup>(A)</sup>	Approximate Remaining Budget	Comment	Approximate Available Surplus
<b>110 - Design</b>					
Open Trench - 2012 Projects and Fernan Concept	\$ 25,500	\$ 25,500	\$ -	All work completed	\$ -
CJPP - 2012 Project	\$ 13,600	\$ -	\$ 13,600	Removed from scope	\$ 13,600
<b>Subtotal</b>	<b>\$ 39,100</b>	<b>\$ 25,500</b>	<b>\$ 13,600</b>		
<b>120 - Construction Support</b>					
Open Trench - 2012 Projects	\$ 57,600	\$ 40,600	\$ 17,000	Minor ongoing support is needed (estimated at \$2,000)	\$ 15,000
Open Trench - 2012 Fernan Court	\$ 41,100	\$ -	\$ 41,100	Construction delayed to 2013	\$ 41,100
CJPP - 2012 Project	\$ 14,800	\$ -	\$ 14,800	Removed from scope	\$ 14,800
<b>Subtotal</b>	<b>\$ 55,900</b>	<b>\$ -</b>	<b>\$ 55,900</b>		
<b>130 - Additional Services</b>					
<b>Subtotal</b>	<b>\$ 5,500</b>	<b>\$ 1,450</b>	<b>\$ 4,050</b>		<b>\$ 4,050</b>
<b>200 - GIS Maintenance</b>					
<b>Subtotal</b>	<b>\$ 25,000</b>	<b>\$ 25,000</b>	<b>\$ -</b>	The remainder of this budget is expected to be used.	<b>\$ -</b>
<b>300 - Mulvan Road Design and Construction Support</b>					
<b>Subtotal</b>	<b>\$ 28,100</b>	<b>\$ 45,100</b>	<b>\$ (17,000)</b>	All work completed	<b>\$ (17,000)</b>
<b>TOTAL - 2012 Projects</b>					
	<b>\$ 153,600</b>	<b>\$ 97,050</b>	<b>\$ 56,550</b>		<b>\$ 71,550</b>
<sup>(A)</sup> Based on approximate job-to-date billings through Sept. 30, 2012.					
				2013 Open Trench - Fernan Court Final Design	\$ 34,100
				2013 Open Trench - Fernan Court Construction Support	\$ 36,300
				2013 Open Trench Total	\$ 70,400
				Remaining Surplus	\$ 1,150

**Attachment B-2 - Fee Breakdown**  
**City of Coeur d'Alene Wastewater Utility**  
**2013 Collection System Projects - Fernan Court Sewer Replacement Project - Final Design and Construction Support**

LABOR-HOUR ESTIMATE												
Task	Description	Principal Engineer	Project Manager	Project Engineer	Design / Observation	Survey Tech / Drafting	PLS	Survey Crew	Clerical	Supplies / Expenses	Subconsultants	Task Totals
110	Preliminary and Final Design											
JULY 2011 AM ENDMENT												
110.51	Preliminary Design											\$0
110.53	Fernan Court: M/H M7-01B to M 7-01E		2		4	16	6	32		\$500		\$7,900
110.56	Geotechnical evaluation (Fernan Court only)											\$0
110.57	Equipment mobilization (Fernan Court only)											\$3,500
110.58	Three borers to approximately 20 ft		1		8	1						\$7,500
110.59	Analysis and recommendations: final report		2		2							\$3,200
110.61	Fernan Court: M/H M7-01B to M 7-01E		2		12	16						\$2,600
110.62	Review historical photographs and land use		1		4							\$500
110.65	Neighborhood meeting (Fernan Court only)		4		2	2				\$100		\$1,600
110.68	Fernan Court: M/H M7-01B to M 7-01E		2		12	16						\$0
110.69	Fernan Court: M/H M7-01B to M 7-01E		2		12	16						\$2,600
JULY 2011 AM ENDMENT SUBTOTAL												
2012 CONTRACT												
110.16	Preliminary Design											
110.21	Concept development: Fernan Court		2		16	24						\$ 4,800
110.25	Final Design											
110.27	General plan prep - Fernan Court											
Included in 2011 Contract (July 19, 2011 A mendment)												
110.28	Specifications (preparing a second bid package)		2		4				1			\$ 700
110.29	Opinion of Probable Cost		2		6							\$ 1,000
110.31	QC/QA review		2									\$ 400
110.32	Final Plans and Bid Documents		4		4	4			8	\$200		\$ 2,100
2012 CONTRACT SUBTOTAL												
2013 Open Trench Project: Final Design and Bidding Documents of Fernan Court TM Alternative #5												
110.33	Final Design											
110.34	Project management & admin		4						6			\$1,100
110.35	Utility coordination and locates (by a subcontractor)				2						\$1,800	\$1,800
110.36	Lateral search and routing (16 residences over 2 days)		1		8	16					\$1,600	\$2,700
110.37	Topographical survey & base map preparation		1		4	16		4		\$750		\$7,000
110.38	Plan preparation: mainline		2		12	16		1				\$3,100
110.39	Plan preparation: service laterals		2		24	24						\$4,900
110.40	Plan preparation: service laterals		1									
110.41	Geotechnical exploration (Fernan Lake Road)											
110.42	Equipment mobilization/ coordination				2							\$1,400
110.43	Three direct push borers to 15-20 ft		1		2	4						\$1,200
110.44	Findings and recommendations: letter report		2		2	1						\$2,700
110.44	Specifications		2		8				8			\$1,900
110.45	Opinion of Probable Cost		2		4							\$700
110.46	QC/QA review		6		4							\$1,100
110.47	Review with the CITY		4		4							\$1,000
110.48	Final Edits and Bid Document Preparation		2		4	8			8	\$200		\$2,100
2013 OPEN TRENCH SUBTOTAL												
		4	29	76	21	68	5	24	22	\$950	\$6,900	\$ 34,100

**Attachment B-2 - Fee Breakdown**  
**City of Coeur d'Alene Wastewater Utility**  
**2013 Collection System Projects - Fernan Court Sewer Replacement Project - Final Design and Construction Support**

Task	Description	LABOR-HOUR ESTIMATE											Task Totals				
		Principal Engineer	Project Manager	Project Engineer	Design / Observation	Survey Tech / Drafting	PLS	Survey Crew	Clerical	Supplies / Expenses	Subconsultants						
120	Bidding through Construction																
120.37	Construction management support																
120.38	Bid advertisement/contractor coordination			1	4												\$800
120.39	Pre-bid meeting			2	4												\$700
120.40	Bid management (questions and addenda)			2	8												\$1,400
120.41	Bid opening and contract award			1	8												\$1,600
120.42	Pre-construction meeting			4	4												\$1,200
120.43	Pre-construction Neighborhood Meeting			2	6												\$50
120.44	Construction Management (submittals, 6 weeks of construction, close out paperwork)			8	32												\$6,200
120.45	Observation (10 hrs/day, 150 LF/day)																\$10,500
120.46	Fernan Court mainline (2 wks, 10 hrs/day)																\$5,500
120.47	Fernan Court, service lines (4 wks, 3 hrs/day)																\$7,100
120.48	Punchlist / clean up																\$1,100
120.49	Geotechnical support (periodic)																\$1,800
120.50	Record Drawings			2	12												\$3,800
	<b>2013 OPEN TRENCH SUBTOTAL</b>	<b>4</b>	<b>23</b>	<b>2</b>	<b>78</b>	<b>4</b>	<b>186</b>	<b>4</b>	<b>24</b>	<b>2</b>	<b>8</b>	<b>24</b>	<b>\$500</b>	<b>\$1,800</b>	<b>\$</b>	<b>\$6,300</b>	

MEMORANDUM

DATE: Nov. 20, 2012  
TO: City Council  
FROM: Troy Tymesen, Finance Director  
RE: Request for Destruction of Records

---

**DECISION POINT:**

Would the City Council approve the destruction of certain public records?

**HISTORY:**

Pursuant to the Records Retention regulations, the attached list of records is being presented to the Council for authorization for the destruction of such records.

**PERFORMANCE ANALYSIS:** Because of the lack of storage space, records are routinely reviewed to determine if the necessity of maintaining the record is warranted. Because the attached list of records has exceeded the time required to maintain them and their useful life has been exhausted, it is necessary to purge these files in order to maintain storage space for future records.

**DECISION POINT:** To adopt Resolution 12-045 authorizing staff to proceed with the destruction of records as listed pursuant to I.C. 50-908.



REQUEST FOR DESTRUCTION OF RECORDS  
DEPARTMENT: Finance Dept.  
DATE: Nov. 20, 2012

RECORD DESCRIPTION	TYPE OF RECORD (Perm./Semi-P/Temp)	DATES OF RECORDS (From - To)
Statements	Temporary	2001-2002
Parking Tickets	Temporary	2005-2006
Out Cards	Temporary	2003
Invoices	Temporary	1998-1999, 2003-2007
UB Cash Receipts Proofs	Temporary	2006
Scanned Documents/LOA's	Temporary	N/A
Cash Receipting	Temporary	2003-2006
Check Copies	Temporary	2001-2007
Cancelled Checks	Temporary	2002-2003
Meter Proofs	Temporary	2005-2006
Stubs/Service Requests	Temporary	2003
Tags	Temporary	2003-2004
Petty Cash	Temporary	1998-1999
Proof & Abstracts	Temporary	1997-2000
Extracts	Temporary	1998-1999
Work Orders	Temporary	2003-2010

**PUBLIC WORKS COMMITTEE  
STAFF REPORT**

**DATE:** November 13, 2012  
**FROM:** David E. Shults, Capital Program Manager *DES*  
**SUBJECT:** Purchase Agreement with GE for WWTP Phase 5C.1 Tertiary Membrane Filter Assemblies

=====

**DECISION POINTS:**

The City Council is requested to approve the specifications and the agreement with GE Water & Process Technologies, Inc. for supply of WWTP Phase 5C.1 tertiary membrane filtration equipment for a total cost of \$1,558,950.

**HISTORY:**

A three phase construction program is planned over the next eleven years to allow compliance with mandatory regulations. Phase 5C.1 improvements are planned to provide earliest improvements needed to meet existing ammonia treatment requirements, and to initiate tertiary membrane filtration for phosphorus control. Phase 5C.2 improvements will provide additional tertiary membrane filtration and other process equipment needed for complying with new permit conditions for the current 4.2 million gallons per day capacity needs of the city. Phase 5C.3 improvements will add process equipment that will be needed for additional capacity needs up to the 20-year planning level capacity of 6 mgd.

The City Council authorized design of Phase 5C.1, and also authorized sole source procurement of the tertiary membrane filtration equipment from GE after successful demonstration in the low phosphorus equipment pilot program that was conducted over a two year period at the City's treatment facilities. HDR Engineering has completed design to the 60% level, and now must incorporate GE's specific equipment measurements and process strategies to allow HDR's project plans and specifications to be completed and ready for construction contractors to bid. Detailed shop drawings from GE are included in the scope of supply. HDR engineering and GE have worked together to develop acceptable features and scope of supply that will serve the City's long range needs. The plans and specifications developed by HDR for GE's equipment are available in electronic format which is included as an attachment with this staff report (242 pages.) It is also available in printed form at the Council office. Equipment and services include hollow core filtration units, backwash and strainer equipment, electronic process control equipment and programming, interconnecting pipes and valves, shop drawings, startup and acceptance testing services, training, and operator assistance. HDR and wastewater staff negotiated with GE to obtain acceptable terms of the contract and cost, and believe that they are fair and reasonable.

**FINANCIAL ANALYSIS:**

<u>WWTP Phase 5C.1</u>	
Planning and Design Engineering	973,555
Building Permit	50,000
Construction Engineering and Inspection	1,060,445
Prepurchase Tertiary Filtration Equipment	1,558,950
Construction Contractor	6,400,000
Contingency 5%	<u>502,148</u>
Total	\$10,545,098

Funding     The city's current financial plan for FY 2012/13 authorizes expenditure of \$7,000,000 for year 1 of the 2 year construction phase. Application for a low-interest loan from Idaho DEQ is anticipated for supplementing cash funding for this project.

**DISCUSSION:**

Pilot testing in Coeur d'Alene, and successful full scale use at larger treatment plants, has led to the City's selection of GE's submerged, reinforced hollow fibers for our choice of technology for satisfying treatment requirements. Sole source procurement from GE was advertised and approved according to Idaho code for several compelling reasons, including proven performance at Coeur d'Alene and other full-scale treatment plants, continued pilot testing and gathering of design criteria, use of specific staff training, expedience for obtaining vendor package design details for incorporating into HDR's Phase 5C.1 plans and specifications, and expedience for providing long-lead manufacture of equipment for earliest construction of Phase 5C.1. Entering into agreement with GE at this time is necessary to advance the project design and to assure that the components are manufactured in time for installation by the City's contractor. Construction of the concrete tankage and masonry building is anticipated to begin in the summer of 2013, with installation of GE's equipment in the latter part of the year.

**DECISION POINT/RECOMMENDATION:**

The City Council is requested to approve the specifications and the agreement with GE Water & Process Technologies, Inc. for supply of WWTP Phase 5C.1 tertiary membrane filtration equipment for a total cost of \$1,558,950.

Attachment

des1485

**SECTION 00500**  
**AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, is between the City of Coeur d'Alene, Kootenai County, Idaho, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Idaho, hereinafter referred to as the "City" or "Buyer", and GE Water & Process Technologies d/b/a Zenon Environmental Corporation, a corporation duly organized and existing under and by virtue of the laws of the state of Michigan, with its principal place of business at 3239 Dundas Street West, Oakville, Ontario L6M 4B2, hereinafter referred to as "Seller".

Buyer and Seller, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - GOODS AND SPECIAL SERVICES

1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Goods and Special Services to be provided under the Contract Documents may be the whole or only a part is generally described as follows:

Coeur d'Alene Wastewater Department - Phase 5C.1 Integrated Membrane System Pre-purchase.

ARTICLE 3 - ENGINEER

3.01 The Contract Documents for the Goods and Special Services have been prepared by HDR Engineering, Inc., who is hereinafter called Engineer and who is to assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the furnishing of Goods and Special Services.

ARTICLE 4 - POINTS OF DESTINATION

4.01 *Points of Destination*

A. The places where the Goods are to be delivered are defined in the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS as the Points of Destination and designated as:

Coeur d'Alene Wastewater Treatment Plant  
881 W. Hubbard Ave.  
Coeur d'Alene, ID 83814

B. The place of delivery specified therein shall be firm and fixed, provided that Buyer may notify Seller no later than forty-five (45) calendar days prior to the scheduled shipment date of the products of an alternate point of delivery (Alternate Delivery Site). Provided the parties agree to a variation to take into account any additional cost or delay incurred by Seller in implementing this change, the Alternate Delivery Site shall become the agreed place of delivery for all purposes under this Agreement. In such event the following conditions shall apply: (i) title and risk of loss shall pass to the Buyer upon delivery of the products to the Alternate Delivery Site; (ii) any amounts payable to the Seller upon delivery or shipment shall become payable upon delivery of the products to the Alternate Delivery Site; (iii) any additional expenses incurred by the Seller in connection with such shipment to storage shall become payable by the Buyer upon

167168.004

Coeur d'Alene Wastewater Department  
Phase 5C.1 Integrated Membrane System Pre-purchase - Final  
AGREEMENT  
00500 - 1

November 6, 2012

submission of the Seller's invoice(s) (including but not limited to costs of any additional transportation, preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any applicable taxes); (iv) transportation of the products from the storage facility to their place of installation shall be the Buyer's responsibility; and, (v) if the Contract includes Special Services, subject to the terms and conditions in the Contract the Seller shall resume provision of Special Services to Buyer when instructed to do so by Buyer provided that all amounts due hereunder plus any cost incurred by Seller in delaying such Services have been paid.

ARTICLE 5 - CONTRACT TIMES

5.01 *Time of the Essence*

- A. All time limits for Milestones, the delivery of Goods and the furnishing of Special Services as stated in the Contract Documents are of the essence. The statement herein that time is of the essence shall not be construed to limit the Seller's cure rights as set forth in the Contract Documents upon default, or any other provision of the Contract Documents or under applicable law that would afford Seller a time certain or a reasonable time to perform its contractual obligations.

5.02 *Dates for Goods and Special Services*

- A. Special Services required by the Contract Documents will be performed pursuant to the schedule set forth:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>CONTRACT TIMES</u>	<u>CALENDAR DAYS</u>
1	Shop Drawing Submittals		
a	Preliminary Process & Instrumentation Drawings	Time Period after Notice to Proceed	14
b	Individual Annotated Equipment Data Technical Cut Sheets	Time Period after Notice to Proceed	28
c	Instrumentation Power and Control Wiring Diagrams and Final Process and Instrumentation Drawings	Time Period after Notice to Proceed	28
d	Electrical Power Drawings	Time Period after Notice to Proceed	42
e	Control Panel I/O Wiring Drawings and Annotated Electrical Equipment Data Technical Cut Sheets	Time Period after Notice to Proceed	56
2	Preliminary O&M Manual	Time Period after Notice to Proceed	126
3	Installation Manuals	Time Period after Notice to Proceed	210
4	Completion of Pre-demonstration Period	Time Period after Construction Contractor states equipment is ready for commencement of manufacturer's field services <sup>1</sup>	35
5	Completion of Functional Demonstration Period	Time Period after the Construction Contractor has corrected all punchlist items that affect the operation of the membrane system <sup>2</sup>	14

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>CONTRACT TIMES</u>	<u>CALENDAR DAYS</u>
6	Completion of Performance Demonstration Period	Time Period after Completion of Functional Testing	7
7	Completion of Operator Training	Time Period after Completion of Functional Testing	7
8	Final O&M Manual	Time Period after Completion of Functional Demonstration Period	7
9	Acceptance Testing	Time Period after Completion of Performance Demonstration Period that Seller has to complete this task.	271

<sup>1</sup> No later than 500 calendar days after Notice to Proceed.

<sup>2</sup> No later than 28 days after completion of pre-demonstration period at which time, or before, Seller has notified Construction Contractor of punchlist items that affect operation of the membrane system.

1. Seller shall be provided a minimum of thirty (30) calendar days notification prior to each activity requiring such Special Services.
- B. The Goods are to be delivered FOB to the Point of Destination and ready for Construction. Delivery date shall be coordinated with the Construction Contractor prior to shipment. Contractor's receipt of delivery shall occur no later than the dates as listed below:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>CONTRACT TIME</u>	<u>CALENDAR DAYS</u>
1	Goods, excluding Membrane Elements and Spare Parts	Notice to Proceed	316
2	Membrane Elements and Spare Parts	Notice to Proceed	385

1. Seller agrees it will not proceed with fabrication of goods until it has received Notice to Proceed with Fabrication from Buyer.

### 5.03 Liquidated Damages

A. Buyer and Seller recognize that time is of the essence of this Agreement and that Buyer will suffer financial loss if the Goods are not delivered at the Point of Destination and ready for receipt of delivery by Buyer within the times specified for delivery of Goods and Special Services for each item in Paragraph 5.02, plus any extensions thereof allowed in accordance with Article 7 of the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS. The parties also recognize that the timely performance of services by others involved in the Project are materially dependent upon Seller's specific compliance with the requirements for delivery of Goods and Special Services. Further, they recognize the delays, expense and difficulties involved in proving the actual loss suffered by Buyer if complete acceptable Goods are not delivered on time. Because the Buyer finds it impractical to calculate the actual cost of delays, it has adopted the following formula to calculate liquidated damages. Accordingly, the Seller agrees:

1. To pay (according to the following formula) liquidated damages for each calendar day beyond the number of calendar days established in this Agreement using the following formula:

$$LD = \frac{0.15 C}{T}$$

167168.004

Coeur d'Alene Wastewater Department  
Phase 5C.1 Integrated Membrane System Pre-purchase - Final  
AGREEMENT  
00500 - 3

November 6, 2012

Where:

LD = liquidated damages per calendar day (rounded to the nearest dollar).

C = original Contract amount per item in Paragraph 6.01.

T = original time for Completion per item in Paragraph 5.02.A.

2. To authorize the Buyer to deduct these liquidated damages from any money due or coming due to the Seller.
  3. The maximum total amount for liquidated damages shall be limited to fifteen (15) percent of the Total Contract Price in Article 6.
- B. The liquidated damages provided in this Specification Section shall be Buyer's sole and exclusive remedy for Seller's delay in achieving completion of furnishing the Goods or Special Services within the time specified in the Contract Documents. Seller shall have no liability to Buyer under this Article if Seller's delay causes no damages or losses to Buyer.
1. Should Buyer's overall project schedule demonstrate that Seller's delay in providing the Special Services will delay the bidding of the construction contract to install Seller's Goods then liquidated damages will be assessed.
  2. If Buyer's and/or Construction Contractor's schedule demonstrate that Seller's delay in providing the Goods and Special Services will delay the project then liquidated damages will be assessed.
- C. If Seller is prevented from achieving the delivery times, milestone submittal dates or response times as defined in Article 5.02., for any reason beyond Seller's reasonable control and not attributable to its actions or inactions, Seller shall not be assessed liquidated damages and shall be entitled to an adjustment of the Contract Times in an amount equal to the duration of the reason or event causing the delay in delivery.

#### ARTICLE 6 - CONTRACT PRICE

6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents in current funds pursuant to the schedule below:

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>PERCENTAGE OF CONTRACT PRICE</u>	<u>CONTRACT PRICE</u>
5.02.A.1.a.	Preliminary Process & Instrumentation Drawings	2	\$31,179
5.02.A.1.b.	Individual Annotated Equipment Data Technical Cut Sheets	2	\$31,179
5.02.A.1.c.	Instrumentation Power and Control Wiring Diagrams and Final Process and Instrumentation Drawings	2	\$31,179
5.02.A.1.d.	Electrical Power Drawings	2	\$31,179
5.02.A.1.e.	Control Panel I/O Wiring Drawings and Annotated Electrical Equipment Data Technical Cut Sheets	2	\$77,948
5.02.A.2.	Approval of Preliminary O&M Manuals	5	\$77,948
5.02.A.4.	Completion of Pre-Demonstration Period	5	\$77,948
5.02.A.5.	Completion of Functional Demonstration Period	5	\$77,948
5.02.A.6.	Completion of Performance Demonstration Period	5	\$77,948
5.02.A.7.	Completion of Operator Training	5	\$77,948
5.02.A.8.	Delivery of Approval Final O&M Manuals, Project Record Documents, and As-Built Record Drawings	5	\$155,895
5.02.A.9.	Completion of Acceptance Testing	10	\$623,580
5.02.B.1.	Delivery of Goods, excluding membrane elements and spare parts	40	\$155,895

167168.004

Coeur d'Alene Wastewater Department  
Phase 5C.1 Integrated Membrane System Pre-purchase - Final  
AGREEMENT  
00500 - 4

November 6, 2012

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>PERCENTAGE OF CONTRACT PRICE</u>	<u>CONTRACT PRICE</u>
5.02.B.2.	Delivery of Membrane Elements and Spare Parts	10	\$31,179
<b>TOTAL CONTRACT PRICE:</b>			<b>\$1,558,950</b>
<b>TOTAL CONTRACT PRICE: One million five hundred fifty-eight thousand nine hundred and fifty dollars.</b>			

ARTICLE 7 - PAYMENT PROCEDURES

7.01 *Submittal and Processing of Payments*

- A. Seller shall submit Applications for Payment in accordance with Article 10 of the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS and Section 01150 MEASUREMENT AND PAYMENT FOR PROCUREMENT CONTRACTS. Applications for Payment will be processed by Engineer as provided in the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS.

7.02 *Progress Payments*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
1. Payments for all items listed in Article 6 will be made on successful completion or delivery of the services and/or good.

7.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.06 of the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS, Buyer shall pay the remainder of the Contract Price as recommended by Engineer.

ARTICLE 8 - INTEREST

All moneys not paid when due hereunder shall bear interest at the maximum statutory rate in accordance with laws of the State of Idaho or eighteen (18) percent per annum, whichever is lowest.

ARTICLE 9 - SELLER'S REPRESENTATIONS

9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:

- A. Seller has examined and carefully studied the Contract Documents.
- B. If specified or if, in Seller's judgment, any local condition may affect cost, progress or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and become familiar with and is satisfied as to the local conditions that may affect cost, progress or the furnishing of the Goods and Special Services.
- C. Seller is familiar with and is satisfied as to all local federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Goods and Special Services.
- D. Seller has carefully studied and correlated the information known to Seller, and information and observations obtained from Seller's visits, if any, to the Point of Destination, with the Contract Documents.

167168.004

Coeur d'Alene Wastewater Department  
Phase 5C.1 Integrated Membrane System Pre-purchase - Final  
AGREEMENT  
00500 - 5

November 6, 2012



- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.
- G. The Seller has provided test data from either full scale operation(s) or pilot test data from facilities of similar water quality to the Project as information and design concepts for its proprietary membrane system. In providing the information and design concepts for this Project, the Seller has considered and incorporated the concept of "linear scalability" into its design. Linear scalability means that: 1) the Seller has considered and evaluated the design and operational requirements and results of pilot testing, and 2) that the equipment provided by the Seller is warranted to produce water in proportion to the design and operational parameters established and demonstrated during pilot testing or full scale operation on similar waters.
  - 1. The concept of linear scalability relates to the surface area of the membrane and to its corresponding ability to produce water as a dependent variable on an incremental and proportional basis. Dependant variables are the parameters of specific or instantaneous design (e.g. membrane flux, process flows, temperatures, times, maximum pressures, and chemical dosages or consumption) requirements for filtration, backwashing, cleaning, and integrity testing processes that are established on a module basis during piloting and/or incorporated into the unit and system design provided by the Seller to meet the design capacity requirements established in the Contract Documents.
  - 2. The concept of linear scalability excludes the independent variables that involve membrane removal performance and overall system performance established in the Contract Documents. Such independent variables include the water quality removal requirements, removal efficiency, and the minimum design requirements for Maintenance/Recovery Clean interval when the membrane system is operated within its intended process design range.
- F. Seller's relationship to the Buyer in performance of this Agreement is that of an Independent Contractor. The personnel performing services under this Agreement shall at all times be under the Seller's exclusive direction and control and not employees of the Buyer. Seller shall pay all wages, salaries and other amounts due to its employees in connection with this agreement and shall be responsible for all applicable state, federal, and local reports and obligations respecting them such as labor wages, social security, income tax withholding, unemployment compensation and similar matters.

ARTICLE 10 - CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement.
  - 2. Performance Bond for Procurement Contracts.
  - 3. Payment Bond for Procurement Contracts.
  - 4. Standard General Conditions for Procurement Contracts.

5. Supplementary Conditions for Procurement Contracts.
6. Specifications as listed in table of contents.
7. Drawings as listed in table of contents.
8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - a. Notice to Proceed.
  - b. Written Amendment(s).
  - c. Change Order(s).
  - d. Field Order(s).
  - e. Engineer's Written Interpretation(s).
- B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS.

#### ARTICLE 11 - MISCELLANEOUS

##### *11.01 Defined Terms*

- A. Terms used in this Agreement will have the meanings indicated in the STANDARD GENERAL CONDITIONS FOR PROCUREMENT CONTRACTS and the SUPPLEMENTARY CONDITIONS FOR PROCUREMENT CONTRACTS.

##### *11.02 Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

##### *11.03 Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

##### *11.04 Limitations of Liability*

167168.004

Coeur d'Alene Wastewater Department  
Phase 5C.1 Integrated Membrane System Pre-purchase - Final  
AGREEMENT  
00500 - 7

November 6, 2012

- A. Notwithstanding any other provisions of the Contract Documents, the Seller's total liability for direct damages arising at any time under any of the Contract Documents or otherwise in connection with completing the Contract (whether arising under breach of contract, tort, strict liability, or any other theory of law) shall not exceed the amount of the Contract Price. Notwithstanding anything to the contrary in the Contract Documents or otherwise, under no circumstances shall Seller be liable for any loss of profit or revenues, incidental, consequential, special, punitive or other indirect damages (other than liquidated damages expressly provided for in the Contract Documents), regardless of whether such damages arise under breach of contract, tort, strict liability, or any other theory of law. Seller's liability shall terminate twenty four (24) months after delivery of the last major equipment component or twelve (12) months after the date of Final Acceptance, whichever occurs latest.

IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement in duplicate. One counterpart each has been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

Buyer: \_\_\_\_\_

Seller: ZENON ENVIRONMENTAL CORP.

By: \_\_\_\_\_

By:  DAVID BINGHAM

Title: \_\_\_\_\_

Attest:  \_\_\_\_\_

Executed on \_\_\_\_ / \_\_\_\_ , 2012 (month/day/year)

Address for giving notice:

ATTEST BY:

3239 DUNDAS SE W.

OSKVILLE, OHIO 43080

APPROVED AS TO FORM:

LGM 432

Agent for service of process:

AS ABOVE

(If Seller is a corporation or a partnership, attach evidence of authority to sign.)

**END OF SECTION**



# ANNOUNCEMENTS

OTHER COMMITTEE MINUTES  
(Requiring Council Action)

November 13, 2012  
**GENERAL SERVICES COMMITTEE  
MINUTES**

**COMMITTEE MEMBERS PRESENT**

Mike Kennedy, Chairperson  
Ron Edinger  
Steve Adams

**CITIZENS PRESENT**

Chris Copstead  
Frank Orzell  
Steve Roberge, Dist. Mgr. - Waste Management  
Kim Stearns, Director - Panhandle Parks Found  
Mike McDowell, Commissioner – Park and Recreation  
Commission

**STAFF PRESENT**

Jon Ingalls, Deputy City Administrator  
Wayne Longo, Police Chief  
Doug Eastwood, Parks Director  
Wendy Gabriel, City Administrator  
Mike Gridley, City Attorney  
Juanita Knight, Senior Legal Assistant  
Troy Tymesen, Finance Director  
Tony Woltz, PD  
Capt. Steve Childers, PD

**Item 1. Alley Garbage Service / Request to Eliminate Two-Block Section.  
(Consent Calendar)**

Steve Roberge is requesting Council authorize Waste Management to eliminate alley garbage collection for (2) one block sections of alleys in the Forest Cemetery area due to obstructions. Mr. Roberge said that typically garbage is collected from the alleys in areas of the city where alleys are present. The request to eliminate the (2) one block sections is due to obstructions that require drivers to have to back the collection truck down these sections.

**MOTION: by Councilman Edinger seconded by Councilman Adams that Council approve Waste Management's request to eliminate garbage collection for (2) one block sections of alleys in the Forest Cemetery area.**

**Item 2. Surplus Vehicles / Police Department.  
(Consent Resolution No. 12-045)**

Capt. Childers is requesting Council authorization to declare city owned vehicles as surplus and sell at auction. Capt. Childers said that when vehicles acquired by PD have reached the end of their usable life within the department, they are turned over to the Street Department Shop Supervisor for reassignment or surplus disposal. The Streets Supervisor deemed the vehicles as having little value to the city due to their condition and reutilization would be cost prohibitive. The auction house receives a percentage of the sale price. They receive a 15% commission for sales up to \$1,000 and 10% for sales over \$1,000. There is a minimal cost involved to the Department for shuttling vehicles to Post Falls for auction.

**MOTION: by Councilman Adams seconded by Councilman Edinger that Council adopt Resolution No. 12-045 authorizing the Police Department to declare certain vehicles as surplus and allowing them to be sold at auction.**



**Items 3, 4, & 5. Dock Lease Renewals / Brooks Seaplane, Cd'A Parasail and Watersports, and Lake Cd'A Cruises.**  
**(Consent Resolution No. 12-045)**

Doug Eastwood reported that the rental amounts, as per the lease agreements, are increased each year based on the current CPI (Consumer's Price Index). Therefore, the Financial Analysis, as reported in Mr. Eastwood's staff reports, is as follows:

- a) *Brooks Seaplane*: The lease will be \$ 3,173.13, based on a monthly rental of \$ 444.42 per month, per bay, for April 1<sup>st</sup> – October 31<sup>st</sup>, and \$ 62.22, which is the two percent (2%) Department of Lands fee. The lease will be \$ 1,133.26 based on a monthly rental of \$ 222.21 per month, per bay, for November 1<sup>st</sup> - March 31<sup>st</sup>, and \$ 22.22, which is the two percent (2%) Department of Lands fee.
- b) *Cd'A Parasail and Watersports*: The 2014 total lease will be \$ 8,888.30, based on a monthly rental of \$ 888.83, per bay, and \$ 177.77, which is the two percent (2%) Department of Lands fee.
- c) *Lake CdA Cruises*: The lease will be \$ 37,330.86, based on a monthly rental of \$ 888.83 per month, per bay, from April 1<sup>st</sup> to October 31<sup>st</sup>, and \$ 746.62, which is the two percent (2%) Department of Lands fee. Lessee is required to report any use of said dock during the period of November 1 to March 31 providing compensation to the Lessor on a per use basis.

**MOTION: by Councilman Edinger seconded by Councilman Adams that Council adopt Resolution No. 12-045 approving a Lease Agreements with Brooks Seaplane for Commercial Dock - Bay 5, Coeur d'Alene Parasail and Watersports for Commercial Dock – Bays 4 and 9, and Lake CdA Cruises for Commercial Dock – Bays 1, 2, 3, 6, 7, and 8.**

**Item 6. Event Agreements / Taste of Cd'A and Labor Day Festival.**  
**(Consent Resolution No. 12-045)**

Doug Eastwood is requesting Council enter into a three year agreement with the Panhandle Kiwanis Club for the Taste of the Coeur d'Alene's event during the first weekend in August and the Panhandle Parks Foundation for a new festival event over Labor Day Weekend. Mr. Eastwood explained that the Taste of the Coeur d'Alene's event has been held in the City Park for the past 23 years on a year-by-year basis and first come first serve basis. Panhandle Kiwanis requested a three year agreement to assure the dates and times of the annual event. The agreement would be renewable at the end of the second year. The Panhandle Parks Foundation is requesting an agreement to conduct a festival type event at McEuen Park beginning in 2014 when the new park will be opened. They are also requesting to begin the festival event in 2013 and hold the first year event in the City Park. Both groups will pay the city for use of the parks by fees established per resolution. The fees cover booth space including vendors and concessions. Overtime costs are usually associated with special events and those costs are also

paid to the city by the event sponsor. The event(s) cover all costs associated with the event. The Panhandle Kiwanis Club purchased the Taste of the Coeur d'Alene's event from the Festivals Committee approximately 4 years ago. The organizers of the 'Taste' event moved to Arizona and chose not to continue with the event. This event is a favorite amongst the locals and visitors and occurs at the same time as the Art on the Green and the Downtown Street Fair. The Panhandle Parks Foundation is looking to conduct an annual event over Labor Day Weekend that will have a similar attendance at the end of the summer season.

Councilman Kennedy asked if the Park and Recreation Commission is in support of this. Mr. Eastwood responded yes.

Councilman Adams asked if the Labor Day event would be similar to the Taste of Coeur d'Alene's event. Mr. Eastwood said it would be a similar in venue i.e. food, entertainment, arts and crafts.

Councilman Edinger asked if someone other than the Panhandle Kiwanis Club or Panhandle Parks Foundation wanted an event, would they have an opportunity as well? Mr. Eastwood responded yes but not on those dates or at those parks. Councilman Edinger also asked about alcohol being discussed at a prior Parks Foundation meeting. Mr. Eastwood said they chose to table discussion at this time. That topic will be discussed at a meeting in December or January.

**MOTION: by Councilman Edinger seconded by Councilman Adams that Council adopt Resolution No. 12-045 approving a Lease Agreement with Panhandle Kiwanis Club for the Taste of Coeur d'Alene's event and a Lease Agreement with Panhandle Parks Foundation for a new festival over Labor Day Weekend.**

**Item 7. Amendment for Financing of Improvements / McEuen Park.  
(Resolution No. 12-046)**

Wendy Gabriel is requesting Council approve an amendment to the agreement for Financing of Improvements to McEuen Park allowing for the streamlining of the payment of costs related to the project. The amendment does not change the agreed upon financing of costs whatsoever. It merely creates efficiencies in the payment process. Mrs. Gabriel noted in her staff report that on July 17, 2012, the City entered into an agreement with LCDC providing for the process by which payments for costs associated with the McEuen Park/Front Avenue project would be administered. That agreement provided that the City shall pay draw requests by the contractor which were previously approved by LCDC, and then LCDC will reimburse the City the amount requested up to the total LCDC commitment. In this scenario, a draft is prepared twice: the first draft is from the City to the Contractor, and the second is from LCDC to the City reimbursing the City for the draft paid to the contractor. In both instances, reconciliation of accounts and budgets occurs, and staff time is used. If this amendment is approved, it will streamline the payment process. As is the case currently under the original agreement, the draw request must be approved by the City, LCDC, and the project engineer. This does not change. The amendment provides that the contractor submit the draw request directly to LCDC for payment. LCDC

makes the payment directly to the contractor up to its contribution commitment. Therefore, only one draft is created per draw request instead of two.

Councilman Edinger questioned “so this does not take the control out of the hands of this council or future councils?” Mrs. Gabriel said it does not.

Councilman Adams noted that if this is a good thing why was it not considered initially? Mrs. Gabriel said the thinking was that if the City was writing the check in the first instance then they would have the most control. However, in the end, as long as the City is a signature on authorizing the payments, that’s where the control lies, not in writing the check. Councilman Adams asked if the amendment would change the tracking of costs. Mrs. Gabriel said no. It will actually make the tracking easier as now there will only be one account needing balanced instead of two.

Councilman Kennedy reiterated that this is a change to the *process* for payment only. No changes are made to the *control* of payment.

**MOTION: by Councilman Adams seconded by Councilman Edinger that Council adopt Resolution No. 12-046 approving an Amendment to the Financing of Improvements Agreement for McEuen Park with the Lake City Development Corporation (LCDC).**

The meeting adjourned at 12:33 p.m.

Respectfully submitted,  
*Juanita Knight*  
Recording Secretary

## MEMORANDUM

TO: GENERAL SERVICES COMMITTEE

FROM: WENDY GABRIEL, CITY ADMINISTRATOR

DATE: NOVEMBER 13, 2012

RE: AMENDMENT FOR FINANCING OF IMPROVEMENTS, MCEUEN PARK

**DECISION POINT:** Will the City Council approve an amendment to the Financing of Improvements Agreement for McEuen Park between the City of Coeur d'Alene and the Lake City Development Corporation (LCDC), said amendment allowing for the streamlining of the payment of costs related to the project? This amendment does not change the agreed upon financing of costs whatsoever. It merely creates efficiencies in the payment process.

**HISTORY:** On July 17, 2012, the City entered into an agreement with LCDC providing for the process by which payments for costs associated with the McEuen Park/Front Avenue project would be administered. The agreement was approved per Resolution 12-029. That agreement provided that the City shall pay draw requests by the contractor which were previously approved by LCDC, and then LCDC will reimburse the City the amount requested up to the total LCDC commitment. In this scenario, a draft is prepared twice: the first draft is from the City to the Contractor, and the second is from LCDC to the City reimbursing the City for the draft paid to the contractor. In both instances, reconciliation of accounts and budgets occurs, and staff time is used.

**PERFORMANCE ANALYSIS:** If this amendment is approved, it will streamline the payment process. As is the case currently under the original agreement, the draw request must be approved by the City, LCDC, and the project engineer. This does not change. The amendment provides that the contractor submit the draw request directly to LCDC for payment. LCDC makes the payment directly to the contractor up to its contribution commitment. Therefore, only one draft is created per draw request instead of two.

**FINANCIAL ANALYSIS:** The amendment does not change the current financial commitments to the project. It only streamlines the payment process saving staff time and therefore money.

**DECISION RECOMMENDATION:** Staff requests that the City Council support the amendment in order to save time and create efficiencies. All required approvals of draw requests remain unchanged and according to the original agreement, and all financial commitments remain unchanged and according to the original agreement.

RESOLUTION NO. 12-046

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING AN AMENDMENT TO THE AGREEMENT FOR FINANCING OF IMPROVEMENTS, MCEUEN PARK, WITH THE LAKE CITY DEVELOPMENT CORPORATION (LCDC).

WHEREAS, pursuant to Resolution No. 12-029 adopted the 17<sup>th</sup> day of July, 2012, the City of Coeur d'Alene entered into an Agreement for Financing of Improvements, McEuen Park, with the Lake City Development Corporation; and

WHEREAS, staff is recommending the amendment to allow for the streamlining of the payment of costs related to the project as set forth in the amendment to the agreement, a copy of which is attached hereto as Exhibit "1" and incorporated herein by reference; and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof that such amendment be authorized; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the City hereby authorizes an amendment to the Agreement for Financing of Improvements, McEuen Park, with the Lake City Development Corporation pursuant to the agreement attached hereto as Exhibit "1" and by this reference incorporated herein.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized to execute such amendment on behalf of the City.

DATED this 4<sup>th</sup> day of December, 2012.

---

Sandi Bloem, Mayor

ATTEST:

---

Susan K. Weathers, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

COUNCIL MEMBER GOODLANDER Voted \_\_\_\_\_

COUNCIL MEMBER ADAMS Voted \_\_\_\_\_

COUNCIL MEMBER KENNEDY Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.

**AMENDMENT  
TO  
AGREEMENT FOR FINANCING OF IMPROVEMENTS**

**McEuen Park, Coeur D'Alene, Idaho**

THIS AMENDMENT TO AGREEMENT FOR FINANCING OF IMPROVEMENTS (the "Amendment") is made and entered into between the Coeur d'Alene Urban Renewal Agency d/b/a Lake City Development Corporation (the "Agency") and the City of Coeur d'Alene, Idaho (the "City") as of the 6<sup>th</sup> day of November, 2012. The City and Agency are collectively referred to as the "Parties." All other terms are defined in the Agreement for Financing of Improvements, effective as of the 18th day of July 2012 (the "Agreement").

**WITNESSETH**

WHEREAS, the Parties entered into the Agreement on 18<sup>th</sup> day of July, 2012; and

WHEREAS, to facilitate the payment of the Construction Costs, the parties desire to amend section IV of the Agreement to eliminate the requirement that the City provide proof of payment before the Agency reimburses the amount paid by the City.

**THEREFORE**, the Parties amend the Agreement as follows:

1. **Amendment to Section IV of the Agreement.** Section IV. Payments by the Agency is deleted in its entirety and replaced with the following:

**IV. Payments by the Agency.** Provided that the City is in compliance with the terms and conditions of this Agreement, within thirty (30) days of an approved project pay request of the contractor being submitted to the Agency, which has been signed and approved by the project's contract engineer, the City, and the Agency, the Agency will pay the contractor the amount requested up to a maximum of the total Agency Contribution.

2. **Ratification of the Agreement.** Except as set forth in this Amendment, the terms of the Agreement are hereby ratified and confirmed in all respects, and shall remain in full force and effect.
3. **Defined Terms.** Capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.
4. **Execution in Counterparts.** This Amendment may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Agency and the City have caused this Amendment to be executed and delivered by a duly authorized officer of each of them, all this \_\_\_\_ day of November, 2012.

AGENCY: COEUR D'ALENE URBAN RENEWAL  
AGENCY d/b/a LAKE CITY DEVELOPMENT  
CORPORATION

BY: \_\_\_\_\_  
Denny Davis, Chairman

Notice Address:  
LCDC Executive Director  
105 N. 1<sup>st</sup> Street, Suite 100  
Coeur d'Alene, Idaho 83814

CITY: CITY OF COEUR D'ALENE, IDAHO

BY: \_\_\_\_\_  
Sandi Bloem, Mayor

Notice Address:  
City Clerk  
City of Coeur d'Alene  
710 E. Mullan Avenue  
Coeur d'Alene, Idaho 83814



**November 13, 2012**  
**PUBLIC WORKS COMMITTEE**  
**MINUTES**  
**4:00 p.m., Library Community Room**

**COMMITTEE MEMBERS PRESENT**

Council Member Woody McEvers  
Council Member Dan Gookin  
Council Member Deanna Goodlander

**STAFF PRESENT**

Amy Ferguson, Executive Assistant  
Chris Bates, Eng. Project Mgr.  
Jon Ingalls, Deputy City Administrator  
Warren Wilson, Deputy City Attorney  
Gordon Dobler, Eng. Svcs. Director  
Sid Fredrickson, WW Superintendent  
Dave Shults, Capital Program Mgr.  
Troy Tymesen, Finance Director  
Jim Remitz, Utility Proj. Mgr.

**Item 1      Relinquishment of the Fill Slope Easement on Ramsey Road in the Fairway Meadows Subdivision**

**Consent Calendar**

Christopher Bates, Engineering Project Manager, presented a request from Viking Construction to relinquish a ten foot (10') perpetual fill slope easement to the City of Coeur d'Alene along the easterly boundary of their property at the northwest corner of Lopez Avenue and Ramsey Road in the Fairway Meadows subdivision.

Mr. Bates stated in his staff report that in 1994 the noted easement was secured from the Hudson Trust who was the owner of the property west of Ramsey Road, between Kathleen Avenue to the south and the Oakcrest Trailer Park to the north. The Ramsey Road project, which included a full reconstruction of the roadway corridor and a widening from a rough two lane section to a full five lane section with sidewalks and bike paths, was completed in 1995. The purpose of the easement was to provide a slope buffer for the adjoining ground which was notably higher than the finished elevation of the Ramsey Road section. The area of the easement was sloped to the west, seeded, and has long since stabilized. The ground elevation in that area now follows the slope of the roadway, and does not vary more than a few feet from north to south over a length of +/- 550 lineal feet. Viking Construction, the current owner of the property that contains the easement, has initiated the building permit process to construct seven (7) apartment buildings with approximately 62 units. Their proposal is to construct a block wall around the perimeter of their parcel in order to create a completely level site, instead of one that follows the grade of the adjacent Ramsey Road. Proposed construction of the wall encroaches into the easement and is therefore not allowed. Relinquishment of the easement would allow the developer to construct his proposed plan without having to complete a major redesign of the site. There is no financial impact to the City; however, should the relinquishment of the easement not happen, there would be a financial impact to the developer in redesign costs and possible overall cost to develop the site in a manner that is beneficial to him.

Councilman Gookin asked what would happen if the slope failed. Mr. Bates assured him that the slope wouldn't fail and that it is just a very gradual slope, like a front yard. Councilman Gookin also asked if

there a road that is going to be shut down because of the development. Mr. Bates responded that Lopez Road is not going to be shut down and the development is between the north side of Lopez and the Oak Crest trailer park. He further confirmed that the block wall has to be structurally designed and the Building Department must approve it.

**MOTION by McEvers, seconded by Gookin, to recommend Council approve the request for relinquishment of the Fill Slope Easement on Ramsey Road in the Fairway Meadows Subdivision, and authorize staff to prepare documents for relinquishment and recordation at the County Recorder's Office. Motion carried.**

**Item 2      Approval of Engineering Services Contract for Seltice Way**  
**Consent Calendar**

Gordon Dobler, Engineering Services Director, presented a request for authorization to enter into a contract with JUB Engineers for development of preliminary concept and related cost opinions, for improvement of Seltice Way, from Huetter Avenue to the bridge west of Riverstone Drive.

Mr. Dobler stated in his staff report that in early September staff met with Glen Miles from KMPO, Councilman Goodlander, and Tony Berns of LCDC to discuss the possibility of submitting a request for federal funding early next year to improve Seltice Way, from Huetter to the bridge. Seltice Way was constructed as the original interstate and is in dire need of repair and improvement. The concrete pavement is failing, there are numerous pass-through areas in the median that need to be removed to reduce traffic conflicts, the intersection on Seltice and Atlas is a high accident location that needs to be signalized, and there are no continuous pedestrian or bicycle facilities adjacent to the roadway. The cost to affect these repairs and improvements has put this project beyond the reach of what the City could fund through impact fees or general fund dollars, so the ability to obtain outside assistance is critical to its completion. Project funding would come from several sources, such as federal transportation and safety funds, impact fees, general fund (overlay), and an LID. In addition, the project is within the River District of LCDC and is eligible for funding. The project would be a joint effort with Post Falls Highway District.

The purpose of engaging JUB Engineers at this point is to refine the scope of improvements and potential options for the pavement rehabilitation and then generate cost opinions to be used in the application process. The cost of their services is \$10,000. The funds would come from Engineering – Professional Services account. This was not a budgeted item, which would necessitate a budget amendment.

Mr. Dobler explained that this project has enough nuances and it is critical to get the cost figures right the first time, which is why he is requesting a consultant to pin down a couple of items on the project before they put in their application. He further explained that the signal at Atlas and Seltice is not a typical signal and would be a “Z” structure similar to Highway 95. The city has not done one of those kinds of signals and doesn't have the resources to cost it out. The second item is the rehabilitation of the concrete pavement. Mr. Dobler thinks that it would be more efficient to have a consultant who has worked with those kinds of rehabilitation techniques and get a good number in today's market.

Mr. Dobler noted that the funds for the contract are not in the budget this year but he is proposing to take it out of the Professional Services line item. The amount that he spends in that line item fluctuates depending on development, but Mr. Dobler expects that he will overspend that line item. Any overage would show up as a budget amendment in the fall.

Councilman Goodlander commented that she serves on the KMPO Board and that this opportunity to get that stretch of pavement fixed is quite remarkable. Opportunities come along and sometimes we have to go a little over the budget.

Councilman McEvers asked what is driving the request. Mr. Dobler explained that there is going to be a call for applications for projects for federal money through KMPO right after the first of the year. When that happens they have to put together a fairly involved application with a cost estimate for the project. Normally, Mr. Dobler does the cost estimates himself, but this project has some nuances that are a little out of his comfort zone. He explained that the first step is the application, but in the application the costs are set in stone. You have to make sure that you are good “out of the gate.” Mr. Dobler further noted that there are some other potential funding sources available. He would also look at putting in sidewalks, sewer, and water.

Mr. Dobler said that highways are built a lot heavier than arterials. The concrete would be removed but the ballast section would remain, which is a great benefit to them in that they shouldn’t have to do much significant excavation although there could be some areas that they have to fill. He would expect to maintain the median as it can serve as a natural, native swale. If they install sidewalks and curbs, they will need to reevaluate what happens with the drainage.

Councilman Gookin asked about ownership of the road. Mr. Dobler said that most of the road is owned by the city, and that the Post Falls Highway District owns the section that starts 400 to 600 feet west of the Grand Mill signal to Huetter. From that point back to Northwest Boulevard, it is owned by the city.

Councilman Gookin asked what the Post Falls Highway District is contributing to this project. Mr. Dobler said that no money is being contributed at this point and it is a little early for those discussions. Mr. Dobler has advised the highway district of what they are doing and their board is being advised at their next meeting. He thinks that they will begin to have discussions with the highway district as they put together funding, depending on what monies are received.

Councilman Gookin said that he has a couple of issues with this item. One is that it is not a budgeted item, and going over the budget is one of his “sticky points.” Mr. Dobler said that he could still put in the application for funding but would have less of a level of comfort on the cost estimates. He also noted that on federal projects there is typically a match of 7.34 percent. If they can bring in some other funding they have a better chance of getting the project done. If LCDC’s River District could help to fund it, it would go a long way toward getting the project done. Councilman Gookin agreed that the road needs work.

Councilman McEvers asked about LID’s along the highway. Mr. Dobler said that it would be open for discussion and commented that LID’s have been done on practically every street that they’ve put in on some level.

**MOTION: Motion by McEvers , seconded by Goodlander , to recommend Council approval of the non-budgeted expenditure for development of preliminary concept and related cost opinions for improvement of Seltice Way from Huetter Avenue to the bridge west of Riverstone, in the amount of \$10,000.00. Motion carried, with Councilman Gookin voting No.**

**Item 3            Amendment No. 2 – Authorization for Additional Services – 2012 Wastewater Collection System Projects**

**Consent Calendar**

James Remitz, Utility Project Manager, presented a request to authorize the performance of additional professional design services under the existing Agreement for Professional Services between JUB Engineers, Inc. and the City of Coeur d'Alene, dated February 21, 2012. The additional services will provide for the final design and construction support services for the Fernan Court Sewer Replacement Project scheduled for construction in 2013.

Mr. Remitz stated in his staff report that this amendment will modify the 2012 Agreement scope of services to include the final design and construction support services for the construction of a new 8 inch sanitary sewer main within Fernan Lake Road and 16 gravity sewer laterals for residences in the Fernan Lake Terrace Subdivision. As part of this agreement, CIPP design and construction support tasks are to be removed from the scope of services in order to utilize the remaining budget surplus from the 2012 Agreement dated February 21, 2012. There will be no overall change to the original 2012 Agreement amount. Sufficient funding is budgeted and available in the Wastewater Operating Fund.

Mr. Remitz said that this is basically a housekeeping item. They have identified the Fernan Court Sewer project for 2013 and need to change the scope of the contract to include it. There is no cost to the city.

Mr. Fredrickson clarified that the Fernan Court Sewer project is in the city limits. Councilman McEvers asked about the drawings that show the sewer lines going into the homes and asked if that would be included. Mr. Remitz said that the current sewer line exists in the residents' back yards. That line has developed a pretty substantial sag in the middle resulting in one backup to one of the houses, with the potential of future backups. Their plan is to eliminate that line and put a new line in Fernan Lake Road, and then reconnect each of those houses to the new line in Fernan Lake Road, or the existing line in Fernan Court. Mr. Fredrickson said that they normally don't connect the houses, but in this case they are.

Councilman McEvers asked if the city had anything to do with putting a sewer line in the residents' back yard. Mr. Fredrickson responded that the entire subdivision was basically built on wood waste and they are seeing some sagging of the lines, and settling of some of the homes.

Councilman Goodlander said that there are also some water line problems in that area and asked if it is something that needs to be tied together with this project. Mr. Fredrickson said that there was a corrective project to rebuild the water and sewer line in Fernan Court, the road north of Fernan Lake Road, but that was done a couple of years ago. As far as he knows, there are no water issues now.

**MOTION: Motion by Gookin, seconded by McEvers, to recommend council approval of Resolution No. 12-045 authorizing additional services and a modified Scope of Services with JUB Engineers, Inc. providing for the final design and construction support services for the Fernan Court Sewer Replacement Project scheduled for construction in 2013. Motion carried.**

**Item 4            Judicial Confirmation – Revenue Bonds**

**Consent Calendar**

**[After the meeting, Councilman Goodlander removed this item from the Consent Calendar and placed it on the regular Council Agenda]**

Sid Fredrickson, Wastewater Superintendent, presented a request that council authorize Ms. Danielle Quade of the law firm of Hawley Troxell to act as bond counsel in preparing a Petition for Judicial

Confirmation to authorize the city to issue revenue bonds to finance necessary wastewater capital improvements.

Mr. Fredrickson stated in his staff report that in December 2001 the city received judicial confirmation to issue revenue bonds for “ordinary and necessary” capital improvements to the wastewater treatment plant in the amount of \$28 million. This action allowed the city to secure low interest loans from the state to construction two major projects known as Phase 4B and Phase 5B. Phase 4B was completed in 2006 and Phase 5B was completed in 2011. Upcoming necessary capital improvements include advanced tertiary treatment to remove oxygen-depleting substances. These improvements will be constructed over a period of up to 5 or 6 years beginning in the spring of 2013. They are anticipating filing for a state DEQ loan. It is uncertain if they will actually be offered a loan, but they will be prioritized much higher by DEQ if they are in the process of seeking authorization to incur the loan. Loan amounts will be finalized before the final resolution goes to council for approval after the public hearing.

Mr. Fredrickson introduced Danielle Quade, bond counsel with Hawley Troxell. He reviewed the time line and the resolution that would be adopted to approve the notice of hearing to consider a resolution.

Mr. Fredrickson explained that in order to incur any more indebtedness the city would either have to go through a bond election or obtain judicial confirmation for authorization to accept a loan from the state or sell bonds, or both. The judicial confirmation would be for the tertiary treatment phase, phase 5C.1 and 5C.2. Mr. Fredrickson noted that the city went through the same process in 2001 to secure a judicial confirmation in the amount of \$28,000,000, which essentially funded the 4B and 5B projects. In order to progress further into the tertiary treatment they need to obtain additional funding.

Councilman McEvers asked how the city would pay this money back. Mr. Fredrickson said that it would be from rates. Most of the allocation would go towards existing rate payers, although they do anticipate an increase in CAP fees as well.

Mr. Fredrickson said that the interest rate for the last phase completed in 2011 was .5%, but he doesn't think that the city will get that interest rate again since it was under the stimulus funding package. They may qualify for a DEQ loan and will make an application. Ms. Quade confirmed that the DEQ interest rates are in the 2% range right now.

Councilman Gookin said that he saw a notice in the paper that Ms. Quade is the bond council for judicial confirmation in Hayden and asked if there is anyone else in the state who does what she does. Ms. Quade said that there are three firms, and the other two are located in Boise. There is a firm in Spokane also, but she doesn't believe they have council qualified in Idaho. Ms. Quade said that she did the work on the last phase, and also evaluated the validation which was done by prior council and gave the opinion required by DEQ to secure the half percent loan.

Councilman Gookin asked why there was no RFP. Mr. Fredrickson responded that he and Mr. Tymesen have a comfort level with Ms. Quade looking at credentials and experience doing this type of bond work. Councilman Gookin also asked if the upcoming rate increase that council has been anticipating will include this additional funding. Mr. Fredrickson confirmed that it would.

Ms. Quade explained that the DEQ loan that was completed in 2011 is not in repayment. The loan will be closed out at the end of the project, within the next couple of months. At that time the note will go into repayment and won't be retired for 20 years.

Councilman Gookin asked about the January 1<sup>st</sup> permit and if that is the new discharge permit, and also what the draft permit is. Mr. Fredrickson said that right now the city is operating on an administrative

extension of the old 1999 permit. There was an agency draft permit issued about a year ago that they obtained through a public records request that had the numbers they felt were favorable to them as far as trying to meet the new conditions with regard to phosphorus. The State of Idaho has submitted a final version of the 401 certification that contains all of the elements in the permit in which DEQ certifies to the EPA that the draft permit conditions will meet Idaho water quality standards. Once that is done and some other issues are resolved, then they will issue a public draft permit with a 60 day period for public comment. After the comment period closes, then the EPA will take 30 to 45 days to respond to the comments and then, assuming there are not any big differences, they will issue a final permit.

Mr. Fredrickson commented that there are a considerable number of states that do not use a revenue bond election or judicial confirmation in that the governing body is constitutionally empowered to issue revenue bonds.

Councilman Gookin asked if there needs to be a sense of urgency coupled with the ordinary and necessary requirement of judicial bonds. Ms. Quade said that she believes that health and safety issues and permit requirements create the sense of urgency required. In this case there is an 8 to 10 year range for permit compliance, but that requires starting this spring. Although it is a long time frame, there are steps along the way which are very clearly spelled out in the 401 certification. Ms. Quade's opinion is that the judge will find that compelling. Councilman Gookin said that the city would need to make it clear that the reason they are doing the judicial confirmation is because it is ordinary and necessary and that there is a sense of urgency. He would prefer not to have an accusation that council is skirting the will of the public because there have been issues this year already that have caused a lot of stress. Mr. Fredrickson said that the biggest fear that he would have is that someone would go to a federal judge and get a compliance order. If they do not move ahead with a sense of urgency, the DEQ could attempt to obtain a compliance order, and then the city would have to pay heavy daily fines. That is where the sense of urgency stems from.

Councilman Gookin asked if, by initiating this process and voting on it, are they creating any type of prejudice before the hearing; i.e., is their participation at this level somehow obligation them toward future decisions. Mr. Wilson said that this is only the first step to go through the public hearing. This will only set a meeting to adopt a resolution to set a public hearing to consider a resolution.

**MOTION: Motion by McEvers, seconded by Gookin, to recommend Council approval of Resolution No. 12-045 authorizing Ms. Danielle Quade of the law firm of Hawley Troxell to act as bond counsel to the City and calling a Public Hearing to consider filing a Petition for Judicial Confirmation to authorize the city to issue revenue bonds to finance necessary wastewater capital improvements. Motion carried.**

**Item 5            Purchase Agreement with GE for WWTP Phase 5C.1 Tertiary Membrane Filter Assemblies**

**Consent Calendar**

Dave Shults, Capital Program Manager, presented a request for approval of specifications and an agreement with GE Water & Process Technologies, Inc. for supply of WWTP Phase 5C.1 tertiary membrane filtration equipment for a total cost of \$1,558,950.

Mr. Shults stated in his staff report that the City Council authorized design of Phase 5C.1, and also authorized sole source procurement of the tertiary membrane filtration equipment from GE after successful demonstration in the low phosphorus equipment pilot program that was conducted over a two year period at the City's treatment facilities. HDR Engineering has completed design to the 60% level,

and now must incorporate GE's specific equipment measurements and process strategies to allow HDR's project plans and specifications to be completed and ready for construction contractors to bid. Detailed shop drawings from GE are included in the scope of supply. HDR and wastewater staff negotiated with GE to obtain acceptable terms of the contract and cost, and believe that they are fair and reasonable. The city's current financial plan for FY 2012-13 authorized expenditure of \$7,000,000 for year 1 of the 2 year construction phase. Application for a low-interest loan from Idaho DEQ is anticipated for supplementing cash funding for this project.

Mr. Shults explained the three phases of 5C. Phases 5C.1, 2, and 3 will complete the 20 year facility plan that is associated with putting the treatment plant in a position to meet existing requirements as well as upcoming requirements. Phase 5C.1 is a small bite of the larger Phase 5C program laid out in the 20-year facility plan, and is also necessary to help with meeting ammonia limits in the current discharge permit. The 5C.1 project will hopefully also show that the city can save a significant amount of money in their Phase 5C program overall. Mr. Shults commented that they have a lot of confidence in the tertiary treatment process selected for Phase 5C. They need to insert the shop drawings that are part of the GE contract into HDR's overall design of the entire 5C.1 facilities which will allow them to begin construction early summer next year so that they can have the ammonia improvements as well as phosphorus improvements in 2014. Procurement, funding and construction takes time and they must proceed to assure they meet their existing permit requirements.

Mr. Shults explained that Phases 5C.1 and 5C.2 are being built primarily for existing customers. Funding of these two sub-phases will be mostly the responsibility of existing rate payers. In the next five to ten years, Phase 5C.3 will be constructed to expand treatment capacity for the number of customers anticipated in the 20 year facility plan, and funding would be mostly the responsibility of new customers through payment of cap fees.

Councilman McEvers asked how the GE cost would be paid if a loan for the project is being considered in the future. Mr. Fredrickson confirmed that the Wastewater Fund has the cash reserves to purchase the equipment.

**MOTION: Motion by Gookin , seconded by McEvers, to recommend Council approval of Resolution No. 12-045, approving the specifications and the agreement with GE Water & Process Technologies, Inc. for supply of WWTP Phase 5C.1 tertiary membrane filtration equipment for a total cost of \$1,558,950. Motion carried.**

The meeting adjourned at 4:50 p.m.

Respectfully submitted,

Amy C. Ferguson  
Public Works Committee Liaison

**Public Works Committee  
Staff Report**

To: Public Works Committee  
From: H. Sid Fredrickson, Wastewater Supt.  
Date: November 13, 2012  
Subj: Judicial Confirmation

---

**DECISION POINT:**

Council may wish to authorize Ms. Danielle Quade of the law firm Hawley Troxell to act as our bond counsel in preparing a Petition for Judicial Confirmation to authorize the city to issue revenue bonds to finance necessary wastewater capital improvements.

**HISTORY:**

In December 2001 the city received judicial confirmation to issue revenue bonds for “ordinary and necessary” capital improvements to the wastewater treatment plant in the amount of \$28 million.

This action allowed the city to secure low interest loans from the state to construct two major projects known as Phase 4B and Phase 5B. Phase 4B was completed in 2006 and Phase 5B was completed in 2011.

Idaho code allows cities to use two methods of entering into bonded indebtedness; a bond election or petitioning a district judge to find the requested projects to be “ordinary and necessary” and thus not required to comply with the requirements of Article VIII §3 of the Idaho constitution and authorizing the issuance of bonds.

Upcoming necessary capital improvements include advanced tertiary treatment to remove oxygen-depleting substances such as organic residuals, ammonia and phosphorus. These improvements will be constructed over a period of up to 5 or 6 years beginning in the spring of 2013. The early project, known as Phase 5C-1 will construct needed tankage and install filtration membranes to 1 million gallons per day (MGD) of capacity. The project will be operational in 2014. Assuming everything works as planned, the next phase, 5C-2, will take the capacity to 4.2 MGD and will be operational by 2018.

Attached is the anticipated timeline prepared by Ms. Quade.

**FINANCIAL ANALYSIS:**

We are anticipating that we will file for a state DEQ loan. It is uncertain if we will actually be offered a loan, but will try. We will be prioritized much higher by DEQ if we are in the process of seeking authorization to incur the loan.

As of this time the planning level cost estimate for Phase 5C-1 is \$10,580,000 and Phase 5C-2 is \$20,800,000 for a total of about over \$31,380,000.



The amount will be finalized before the final resolution goes to council for approval after the public hearing.

**PERFORMANCE ANALYSIS:**

The new discharge permit issued by the EPA will place very stringent limits on all oxygen-depleting substances. While the draft permit anticipates a compliance schedule of up to 10 years, it places time limits for certain milestones. It requires that the city has awarded the construction contract for the full project by 5 years after the effective date of the permit. It will further require that the project has been completed by 8 years after the permit date. By 10 years after the permit date, the city must be in full compliance.

Failure to meet these, and other, milestones can lead the state and EPA asking a federal judge to issue a compliance order with an accelerated compliance timeline.

Failure to meet final permit limits can result in a fine of \$37,000 per day per violation.

**DECISION POINT:**

Council may wish to authorize Ms. Danielle Quade of the law firm Hawley Troxell to act as our bond counsel in preparing a Petition for Judicial Confirmation to authorize the city to issue revenue bonds to finance necessary wastewater capital improvements.

**CITY OF COEUR D'ALENE, STATE OF IDAHO**

**JUDICIAL CONFIRMATION TIMELINE**  
Idaho Code § 7-1301 et seq.

<b>DATE/ TIMING</b>	<b>ACTIVITY</b>	<b>RESPONSIBILITY</b>
11/13/12 (4:00 p.m.)	Public works presentation re project and judicial confirmation process	City/Bond Counsel
11/20/12 (6:00 p.m. - regular meeting)	Council meeting to adopt resolution approving Notice of Hearing to consider a Resolution authorizing filing of Petition for judicial confirmation	City/Bond Counsel
On or before 12/2/12	Publication of Notice of Hearing including time and place of hearing and summary of matter (§§ 7-1304 and 7-1306(2)) <i>[Once, at least 15 days prior to public hearing] (Submit to Coeur d'Alene Press by _____)</i>	Bond Counsel
On or before 12/3/12	Service of notice by certified mail (to those requesting notice of all meetings pursuant to § 7-1304) <i>[ At least 14 days prior to public hearing]</i>	Political Subdivision
12/18/12 (6:00 p.m. - regular meeting)	Public Hearing to determine whether Council should adopt Resolution to authorize filing of Petition (§ 7-1304)	Political Subdivision
1/__??2/13 (6:00 p.m. - regular meeting)	Council meeting to adopt Resolution to approve filing of Petition (§ 7-1304) <i>[Not Less than 14 days after Public Hearing]</i>	Bond Counsel; Underwriter/Bank
1/7/13	File verified Petition and obtain hearing date (§ 7-1304)	Bond Counsel
For 3 consecutive weeks prior to hearing on petition, in main news section (far forward)	Publication of court clerk's notice of filing of Petition (§ 7-1306)	Bond Counsel
At least 30 days prior to hearing on petition	Posting of notice of filing Petition at main door of administrative office of City (§ 7-1306)	Bond Counsel
	Preparation and filing of memorandum and supporting affidavits	Bond Counsel
Unknown	Discovery	Opposing Parties
	Hearing on Petition (§ 7-1308)	Bond Counsel
Following hearing	Judge's Decision	
42 days after judgment rendered	Appeal period expires (§ 7-1309)	

TIMELINE (As of November 6, 2012)

RESOLUTION NO. 12-049

WHEREAS, the City of Coeur d'Alene, State of Idaho (the "City") is considering adoption of a resolution to file a petition for judicial confirmation pursuant to Title 7, Chapter 13 of the Idaho Code to confirm the power of the City to issue revenue bonds (the "Bonds") under the provisions of Section 50-237, Idaho Code, and Sections 50-1027 through 50-1042, Idaho Code, inclusive, pursuant to an ordinance to be adopted by the members of the City Council (the "Council"). The proceeds from the sale of the Bonds will be used by the City to finance the costs of certain improvements to the wastewater treatment facility system serving the City's residents (the "System"), which System is owned and operated by the City;

WHEREAS, the City desires to hold a public hearing pursuant to Idaho Code §7-1304 to consider whether it should adopt a resolution or ordinance authorizing the filing of the petition for judicial confirmation;

WHEREAS, pursuant to Idaho Code §§ 7-1304 and 7-1306, notice of the public hearing in substantially the form attached hereto as Exhibit A shall be published in the *Coeur d'Alene Press* in the main news section, far forward, at least 15 days prior to the date of the public hearing, and shall be provided to all persons requesting such notice via certified mail at least 14 days prior to the date of the public hearing.

NOW, THEREFORE, be it resolved by the Council as follows:

Section 1.     Calling of Public Hearing. The City shall hold a public hearing at its regularly scheduled meeting of its Council on December 18, 2012 at 6:00 p.m. to obtain public comment regarding its consideration of adopting a resolution to file a petition for judicial confirmation to confirm its power to issue revenue bonds in accordance with Section 50-237, Idaho Code, and Sections 50-1027 through 50-1042, Idaho Code, inclusive, pursuant to the terms of an ordinance. The proceeds from the sale of the Bonds will be used by the City to finance all or a portion of the costs of the improvements to the System as described in the Notice of Public Hearing, a draft of which is attached hereto as Exhibit A.

Section 2. Notice of Public Hearing. The notice of the public hearing in substantially the form attached hereto as Exhibit A will be published in the *Coeur d'Alene Press* in the main news section, far forward, at least 15 days prior to the date of the public hearing and shall be provided to all persons requesting such notice via certified mail at least 14 days prior to the date of the public hearing.

PASSED by the Council of the City this 20<sup>th</sup> day of November, 2012.

CITY OF COEUR D'ALENE,  
STATE OF IDAHO

---

Mayor

ATTEST:

---

City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER KENNEDY Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

COUNCIL MEMBER GOODLANDER Voted \_\_\_\_\_

COUNCIL MEMBER ADAMS Voted \_\_\_\_\_

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.

**NOTICE OF HEARING TO CONSIDER A RESOLUTION  
AUTHORIZING THE FILING OF A PETITION  
FOR JUDICIAL CONFIRMATION UNDER THE  
IDAHO JUDICIAL CONFIRMATION LAW**

**CITY OF COEUR D’ALENE, STATE OF IDAHO**

THIS NOTICE OF HEARING is provided pursuant to Idaho Code Section 7-1304. Notice is hereby given that the City Council (the “Council”) of the City of Coeur d’Alene, State of Idaho (the “City”) shall conduct a public hearing to consider the adoption of a resolution or ordinance authorizing the filing of a petition for judicial confirmation under Title 7, Chapter 13 of the Idaho Code (the “Judicial Confirmation Law”). The public hearing will be held on December 18, 2012, at 6:00 p.m., in the Community Room of the Coeur d’Alene Public Library, 702 E. Front Avenue, Coeur d’Alene, Idaho.

The matter to be discussed in the public hearing is whether the Council should adopt a resolution or ordinance authorizing the filing of a petition in the First Judicial District Court of the State of Idaho (the “District Court”) under the Judicial Confirmation Law to obtain judicial examination and determination of the validity of certain revenue bonds to be issued by the City (the “Bonds”) pursuant to the terms of an ordinance to be adopted by the Council, the proceeds from the sale of said Bonds to be used to finance all or a portion of the costs of certain improvements to the City’s wastewater treatment facility system (the “System”), which improvements are included in the System’s facility plan and required to satisfy more stringent permit requirements for discharge of ammonia, phosphorus, and biochemical oxygen demand. The proposed improvements to the System and estimated costs thereof are specifically listed below. The District Court will be requested to determine the validity of the Bonds under Section 50-237, Idaho Code, and Sections 50-1027 through 50-1042, Idaho Code, inclusive, and that such Bonds may be payable from the rates and charges levied, assessed and collected for the services, facilities and commodities furnished by the System, pursuant to Idaho Code Section 50-1030(f).

<b><u>Description of Proposed Improvements</u></b>	<b><u>Estimated Costs</u></b>
Primary Process Improvements - Primary Clarifier No. 3	\$1,662,000
Primary Process Improvements – Primary Clarifier Cover	\$1,686,000
Chemical Storage and Feed	\$306,000
Secondary Process Improvements - Secondary Clarifier	\$4,374,000
Tertiary Process Addition – Tertiary Membrane Filtration (TMF):	\$25,562,000
- site work and yard piping	
- TMF transfer pumping station	
- TMF Facilities and equipment	
- electrical	
- instrumentation and control	
Total:	\$33,590,000

Copies of the proposed petition and form of ordinance may be examined at the administrative offices of the Council during regular business hours 8:00 a.m. to 5:00 p.m.

DATED: this \_\_\_ of November, 2012

CITY OF COEUR D’ALENE, STATE OF IDAHO

OTHER BUSINESS

## RESOLUTION NO. 12-048

(Transactions with Idaho Bond Bank Authority)

A RESOLUTION AUTHORIZING PROCEEDING WITH ISSUANCE AND SALE OF A SEWER REVENUE REFUNDING BOND, SERIES 2012, OF CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AND AUTHORIZING RELATED ACTIONS AND MATTERS.

WHEREAS, the City Council (the "Council") of the City is authorized and empowered by the Revenue Bond Act, Idaho Code Sections 50-1027 through 50-1042, inclusive, and the Municipal Bond Law of the State of Idaho, being Idaho Code, Title 57, Chapter 2, to authorize, issue, sell and deliver revenue bonds to finance the acquisition and construction of improvements and additions to the City's wastewater system (the "System");

WHEREAS, to finance improvements to the System, on August 7, 2001, the Mayor and Council adopted Ordinance No. 3029 ("Ordinance No. 3029") providing for the issuance of the City's Sewer Revenue Bonds, Series 2001, and additional bonds thereunder up to the aggregate amount of \$28,000,000 pursuant to supplemental ordinances ("Ordinance No. 3029");

WHEREAS, on November 29, 2001, the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai in Case No. CV-01-6145, issued Findings of Fact, Conclusions of Law and Judgment finding, among other things, that the City has the authority to issue revenue bonds in the total aggregate amount of \$28,000,000, and that such obligations when executed pursuant to Ordinance No. 3029, are valid and binding obligations of the City (the "Judicial Confirmation");

WHEREAS, pursuant to the Judicial Confirmation, on December 1, 2007, the City issued to the State of Idaho Department of Environmental Quality (the "IDEQ") its Sewer Revenue Bonds, Series 2007, in a single maturity in the principal amount of \$15,000,000 payable from the net revenues of the System (the "2007 Bond") pursuant to Ordinance No. 3323 adopted by the City Council on November 20, 2007 ("Ordinance No. 3323"), which Ordinance No. 3323 supplemented Ordinance No. 3029;

WHEREAS, the Council has been advised that the 2007 Bond may be refinanced at a savings and to the benefit and advantage of the City;

WHEREAS, Idaho Code Section 67-8722 provides that in addition to any other powers the City may have, the City may issue municipal bonds for sale to the Idaho Bond Bank Authority (the "IBBA"), with such interest rate, maturity, redemption, security, remedies and other terms as the City may agree with the IBBA;

WHEREAS, the City has applied to the IBBA for the IBBA to issue a portion of its Revenue Bonds, Series 2012D (the "IBBA Bonds") on behalf of the City to provide funds to the City to refund the 2007 Bond and the IBBA has approved the City's application;

WHEREAS, the Council desires to authorize the actions needed to prepare for the issuance and sale to the IBBA of its Sewer Revenue Refunding Bond, Series 2012 (the “2012 Bond”), the proceeds of which shall be used to defease and redeem the 2007 Bond and to pay costs of issuance of the 2012 Bond;

WHEREAS, the City desires to appoint Hawley Troxell Ennis & Hawley LLP as bond counsel (“Bond Counsel”), and direct Bond Counsel to prepare documentation for the issuance and sale of the 2012 Bond and refunding of the 2007 Bond, including review and preparation of the Loan Agreement between the City and IBBA in the form presented to the Council providing for the loan to the City and sale of the 2012 Bond to the IBBA to evidence the loan (the “Loan Agreement”), and the IBBA’s preliminary official statement with respect to the IBBA Bonds (the “IBBA POS”) in the form provided to the Council;

WHEREAS, as required by Section 57-215, Idaho Code, the City desires to approve for publication the form of notice of sale with respect to the negotiated sale of the 2012 Bond to the IBBA;

WHEREAS, the Council desires to authorize actions and documents to provide notice of prepayment of the 2007 Bond to IDEQ and to provide that certain of the proceeds from the sale of the 2012 Bond to the IBBA, together with other available funds of the City, if any, shall be used to defease and prepay the outstanding principal and accrued interest on the 2007 Bond to the date of payment.

IT IS HEREBY RESOLVED by the Council as follows:

**A. 2012 Bond.**

All actions of the City in applying to the IBBA for the loan are hereby ratified and approved.

Hawley Troxell Ennis & Hawley LLP is appointed as the City’s Bond Counsel for the sale of the 2012 Bond.

The 2012 Bond of the City shall be sold pursuant to negotiated sale to the IBBA. The Notice of Negotiated Private Bond Sale (the “Notice”) substantially in the form attached hereto as Exhibit A is hereby ratified and approved, and Bond Counsel is authorized to complete the Notice and effect timely publication thereof in The Coeur d’Alene Press, a weekly newspaper published or of general circulation in Kootenai County, Idaho, prior to the sale of the 2012 Bond on or about November 29, 2012 (the “Sale Date”).

The form of the Loan Agreement between the City and the IBBA, substantially in the form attached hereto as Exhibit B, is hereby approved as the form which may be made available to the IBBA to evidence the terms and conditions upon which the City will issue and sell the 2012 Bond and refinance the outstanding 2007 Bond with proceeds thereof, provided that the City will take official action on such Loan Agreement at the time that the City confirms the sale of the 2012 Bond to the IBBA on the Sale Date, and will adopt such changes to the form of the Loan Agreement as necessitated by the sale of the 2012 Bond.



The Council authorizes Bond Counsel to prepare the form of master ordinance and first supplemental ordinance thereof to be adopted on the Sale Date (collectively, the “Bond Ordinance”) to evidence the terms and conditions upon which the City will issue the 2012 Bond and to approve the final Loan Agreement, and related actions and documents.

**B. Redemption of 2007 Bond.**

The form of the City’s Notice of Prepayment and Waiver and Consent (“Notice”) to IDEQ, as the holder of the 2007 Bond, substantially in the form attached as Exhibit C hereto, is approved, the officials of the City are authorized to execute the Notice, and Bond Counsel is authorized to send the Notice to IDEQ, and obtain IDEQ’s waiver and consent to the prepayment.

**C. IBBA POS.**

The Council authorizes the City’s officials to work with the underwriter for the IBBA Bonds and Bond Counsel to review and provide information to complete the portions of the IBBA POS relating to the City and the City’s 2012 Bond.

**D. Other.**

That all resolutions in conflict or inconsistent herewith are hereby repealed to the extent of any such conflict or inconsistency.

Adopted and approved this 20th day of November, 2012.

\_\_\_\_\_  
Sandi Bloem, Mayor

ATTEST:

\_\_\_\_\_  
Susan Weathers, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

**ROLL CALL:**

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

COUNCIL MEMBER GOODLANDER Voted \_\_\_\_\_

COUNCIL MEMBER ADAMS Voted \_\_\_\_\_

COUNCIL MEMBER KENNEDY Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.

**EXHIBIT A**

**FORM OF NEGOTIATED PRIVATE BOND SALE**

Public notice is hereby given by the City of Coeur d'Alene, Kootenai County, Idaho (the "City"), of negotiation for and private sale to the Idaho Bond Bank Authority (the "Purchaser") of the City's Sewer Revenue Refunding Bond, Series 2012 in the principal amount of up to \$\_\_\_\_\_ (the "Bond") pursuant to a Loan Agreement between the City and the Purchaser (the "Loan Agreement"). The terms of the Bond and Loan Agreement will be as authorized by a bond ordinance (the "Ordinance") adopted at a special meeting of the members of the City's Council to be held on Thursday, November 29, 2012 at \_\_\_\_\_ p.m. at \_\_\_\_\_, Coeur d'Alene, Idaho. Additional information concerning the terms and provisions of the Bond, the Ordinance, the Loan Agreement, the security for payment of the Bond, and other pertinent information relating to the Bond is available for public inspection at City Hall, 710 E. Mullan Avenue, Coeur d'Alene, Idaho (telephone: 208.769.2300).

The City intends to proceed to close on the Bond on or about December 20, 2012, subject to meeting all necessary conditions set forth in the proposed Loan Agreement with the Purchaser and the Bond Ordinance.

Dated: November \_\_, 2012.

CITY OF COEUR D'ALENE,  
KOOTENAI COUNTY, IDAHO

/s/ \_\_\_\_\_  
Sandi Bloem, Mayor

**EXHIBIT B**  
**FORM OF LOAN AGREEMENT**

**EXHIBIT C**

**FORM OF NOTICE OF PREPAYMENT**

**NOTICE OF PREPAYMENT AND REQUEST FOR CONSENT AND WAIVER**

TO: State of Idaho Department of Environmental Quality (“IDEQ”)

DATE: \_\_\_\_\_, 2012

RE: City of Coeur d’Alene Sewer Revenue Bonds, Series 2007 issued December 1, 2007, as a single maturity in the principal amount of \$15,000,000 (the “2007 Bond”) authorized under Ordinance No. 3323 adopted on November 20, 2007 (the “Bond Ordinance”), by the City of Coeur d’Alene, Kootenai County, Idaho (the “City”) and evidencing obligations of the City under Loan Agreement (Loan #1899-03) executed by the City on June 4, 2003 (the “Loan Agreement”) between the City, as borrower, and the IDEQ, as lender, to finance certain sewer system improvements

NOTICE IS HEREBY GIVEN to IDEQ of the City’s desire to prepay its obligations under the Loan Agreement, evidenced by the 2007 Bond, by payment of the outstanding principal and interest on the 2007 Bond on or around December \_\_, 2012 (the “Prepayment Date”), pursuant to the prepayment provisions of Section 4 of the Bond Ordinance.

Funds necessary to defease the 2007 Bond are expected to be available and delivered to IDEQ from the proceeds of sale of the City’s Sewer Revenue Refunding Bond, Series 2012 (the “2012 Bond”) on the Prepayment Date. In the event funds are not available to redeem the 2007 Bond due to failure or delay in delivery of the 2012 Bond beyond the Prepayment Date, this Notice shall be null and void.

By execution of the Consent and Waiver appearing hereunder, you hereby (i) consent to the prepayment by the City on the Prepayment Date of all of the City’s obligations due IDEQ under the 2007 Bond and the Loan Agreement, despite the language in the 2007 Bond that prepayment is not allowed; (ii) consent to the prepayment on a date which is not a payment date under the Loan Agreement or 2007 Bond; (iii) waive the 30-day notice requirements under the Bond Ordinance, and acknowledge timely receipt of this notice of the prepayment prior to the Prepayment Date.

Sincerely,

CITY OF COEUR D’ALENE, KOOTENAI  
COUNTY, IDAHO

By: \_\_\_\_\_

CONSENT AND WAIVER

The undersigned, on behalf of the State of Idaho Department of Environmental Quality (the "IDEQ") certifies as follows:

1. IDEQ hereby agrees that the City of Coeur d'Alene, Kootenai County, Idaho (the "City") may prepay in whole on December \_\_, 2012 (the "Date of Prepayment"), the outstanding principal and accrued interest to the Date of Prepayment on the City's Sewer Revenue Bond, Series 2007, which prepayment shall satisfy all obligations due thereunder and under the Loan Agreement referenced in the above Notice of Prepayment and Request for Consent and Waiver (the "Notice"), notwithstanding any provisions to the contrary contained in the 2007 Bond referenced in the Notice.

2. IDEQ hereby waives the 30-day notice requirements under Section 4 of the City's Bond Ordinance (referenced in the Notice), waives the language in the 2007 Bond that no prepayment of the 2007 Bond is allowed, and acknowledges timely receipt of the Notice from the City prior to the Date of Prepayment.

3. IDEQ acknowledges that the prepayment and defeasance of the 2007 Bond is conditioned upon the successful closing of the issuance and delivery of the City's Sewer Revenue Refunding Bond, Series 2012.

Effective the \_\_\_\_ day of \_\_\_\_\_, 2012.

STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

By: \_\_\_\_\_  
Title: \_\_\_\_\_

LOAN AGREEMENT

Between

IDAHO BOND BANK AUTHORITY

And

CITY OF COEUR D'ALENE, IDAHO

Dated as of December 1, 2012

Relating to

Idaho Bond Bank Authority  
Revenue Bonds  
Series 2012D

## Table of Contents

Page

### ARTICLE I DEFINITIONS

Section 1.1	Definition of Terms .....	1
Section 1.2	Number and Gender .....	5
Section 1.3	Articles, Sections, Etc.....	5

### ARTICLE II REPRESENTATIONS

Section 2.1	Representations of the Municipality.....	5
Section 2.2	Representations of the Authority.....	6

### ARTICLE III LOAN TO MUNICIPALITY; REPAYMENT PROVISIONS

Section 3.1	Loan to Municipality .....	7
Section 3.2	Repayment and Payment of Other Amounts Payable .....	7
Section 3.3	Unconditional Obligation .....	7
Section 3.4	Assignment of Authority's Rights.....	8
Section 3.5	Amounts Remaining In Funds.....	8
Section 3.6	Timeliness of Payments; Consent to State Intercept; Repayment.....	8

### ARTICLE IV SECURITY

Section 4.1	Pledge of System Net Revenues.....	10
Section 4.2	Allocation of System Revenues.....	10
Section 4.3	Additional Parity Debt.....	11
Section 4.4	Reserve Fund .....	12
Section 4.5	Rate Stabilization Account .....	12
Section 4.6	Transfers from Rate Stabilization Account .....	13

### ARTICLE V SPECIAL COVENANTS AND AGREEMENTS

Section 5.1	Punctual Payment .....	13
Section 5.2	Legal Existence .....	13
Section 5.3	Against Encumbrances. ....	13
Section 5.4	Against Sale Or Other Disposition Of The System.....	14
Section 5.5	Maintenance And Operation Of System.....	14
Section 5.6	Right of Access to the Project .....	14
Section 5.7	Tax Exempt Status Of Bonds .....	14
Section 5.8	Notices To Trustee And Authority .....	15
Section 5.9	Continuing Disclosure .....	15
Section 5.10	Eminent Domain Proceeds. ....	21
Section 5.11	Amounts Of Rates, Fees And Charges .....	22
Section 5.12	Enforcement Of And Performance Under Contracts.....	23
Section 5.13	Collection Of Charges, Fees And Rates .....	23
Section 5.14	No Free Service .....	23
Section 5.15	Payment of Claims. ....	23
Section 5.16	Books of Record and Accounts; Financial Statements.....	23
Section 5.17	Payment of Taxes and Other Charges and Compliance With Governmental Regulations .....	24
Section 5.18	Maintenance of Insurance.....	24
Section 5.19	Delivery of Closing Documents. ....	24
Section 5.20	Authority Fees.....	24



<b>ARTICLE VI EVENTS OF DEFAULT AND REMEDIES</b>	
Section 6.1	Events of Default..... 25
Section 6.2	Remedies on Default ..... 25
Section 6.3	Agreement To Pay Attorneys’ Fees and Expenses..... 26
Section 6.4	No Remedy Exclusive ..... 26
Section 6.5	No Additional Waiver Implied By One Waiver..... 27
Section 6.6	No Cross Default. .... 27
 <b>ARTICLE VII PREPAYMENT</b>	
Section 7.1	Redemption of Bonds With Prepayment Moneys ..... 27
Section 7.2	Options To Prepay Installments ..... 27
Section 7.3	Amount of Prepayment..... 27
Section 7.4	Notice of Prepayment..... 27
 <b>ARTICLE VIII DISCHARGE OF OBLIGATIONS</b>	
Section 8.1	Discharge Of Obligations ..... 27
 <b>ARTICLE IX NON-LIABILITY OF AUTHORITY; EXPENSES; INDEMNIFICATION</b>	
Section 9.1	Non-Liability of Authority ..... 28
Section 9.2	Liability of Municipality Limited To System Revenues and Other Funds..... 28
Section 9.3	Indemnification..... 29
 <b>ARTICLE X MISCELLANEOUS</b>	
Section 10.1	Notices..... 29
Section 10.2	Severability..... 29
Section 10.3	Execution of Counterparts..... 29
Section 10.4	Amendments, Changes and Modifications..... 30
Section 10.5	Governing Law..... 30
Section 10.6	Authorized Municipality Representative..... 30
Section 10.7	Term of The Loan Agreement..... 30
Section 10.8	Binding Effect ..... 30
 Signature Page ..... 31	
 Schedule 1 ..... 32	
EXHIBIT A	Description of the Project ..... 33
EXHIBIT B	Repayment Installments and Repayment Installment Dates..... 34
EXHIBIT C	Municipality Closing Documents ..... 35
EXHIBIT D1	Certificate Regarding Annual Financial Information ..... 36
EXHIBIT D2	Notice to Repositories of Failure to File Annual Report ..... 37
EXHIBIT E	Fees Charged by Authority for Failure to Comply with Continuing Disclosure Requirements.....
EXHIBIT F	Post Issuance Tax Compliance Procedures.....

## LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of December 1, 2012, by and between the CITY OF COEUR D'ALENE, IDAHO, a municipal corporation duly organized, existing and operating under the laws and Constitution of the State of Idaho and thereby a "Municipality" under the "Act" as defined below (the "Municipality"), and IDAHO BOND BANK AUTHORITY, an independent public body corporate and politic (the "Authority"),

### WITNESSETH:

WHEREAS, pursuant to the Idaho Code, Title 50, Chapter 10, on \_\_\_\_\_, 2007, the Municipality has previously issued its Department of Environmental Quality Note Series 2007, (the "Prior Note") to finance improvements to its Sewer system and the Municipality intends to issue its Sewer Revenue Refunding Bond, Series 2012 (the "Municipal Bond") for the purpose of currently refunding the Prior Note and refinancing certain Sewer facilities, the "Project");

WHEREAS, the Authority is an independent public body corporate and politic duly created and operating pursuant to Idaho Code, Title 67, Chapter 87 as amended or supplemented from time to time (the "Act");

WHEREAS, the Act authorizes and empowers the Authority to issue bonds for the purpose of purchasing municipal bonds, including loans undertaken by municipalities for any purpose authorized by law;

WHEREAS, the Authority intends to issue Idaho Bond Bank Authority Revenue Bonds, Series 2012D (the "Bonds");

WHEREAS, pursuant to Ordinance No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2012 (the "Bond Ordinance"), the Municipality approved this Loan Agreement to issue the Municipal Bond to evidence a Loan to refinance the Prior Note,; and

NOW, THEREFORE, in consideration of the premises and the respective representations and covenants herein contained, the parties hereto agree as follows:

### ARTICLE 1 – DEFINITIONS

**Section 1.1 Definition of Terms.** Unless the context otherwise requires, the capitalized terms used in this Loan Agreement not otherwise defined herein shall have the meanings specified in Section 1.01 of the Master Trust Agreement, dated as of December 1, 2004 between the Authority and U.S. Bank National Association, as trustee (which trustee has been succeeded by Bank of New York Mellon Trust Company, N.A.), as amended relating to the Bonds (the "Master Trust Agreement"), and all supplemental trust agreements including the Nineteenth Supplemental Trust Agreement dated as of December 1, 2012 (the "Nineteenth Supplemental

Trust Agreement”) by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as previously supplemented and amended or as it may from time to time be supplemented or amended as provided therein with the Master Trust Agreement and all Supplemental Trust Agreements including the Nineteenth Supplemental Trust Agreement referred to herein collectively as the “Trust Agreement.”

“Annual Debt Service” means, for any Fiscal Year, the sum of (1) the interest accruing on all Parity Debt during such Fiscal Year calculated on the basis of a 360-day year consisting of twelve 30-day months, assuming that all Parity Debt is retired as scheduled, plus (2) the principal amount (including principal due as sinking fund installment payments) allocable to all Parity Debt in such Fiscal Year.

“Annual Expense Charges” means the annual charges for Trustee fees, continuing disclosure dissemination agent fees, audit fees, rebate calculation expenses or other expenses related to the Bonds or Loan and paid by the Authority which shall be reimbursed to the Authority by the Municipality as provided in Section 3.2(a) hereof upon receipt of invoice from the Authority or Trustee as well as any late fees or charges related to continuing disclosure or audit submission.

“Authority Fee” means the one-time fee payable by the Municipality to the Authority upon issuance and delivery of the Bonds in the amount set forth in Schedule 1 equal to 1/10 of one percent (.10%) of the total debt service to be paid on the Loan. The amount of any application fee previously paid by the Municipality to the Authority may be credited against the Authority Fee.

“Authorized Municipality Representative” means the Mayor or Municipality Clerk, or any such officer’s designee, or any other officer of the Municipality duly authorized by the Municipality.

“Bond Ordinance” means the Bond Ordinance defined in the last WHEREAS Clause above.

“Certificate of the Municipality” means an instrument in writing signed by an Authorized Municipality Representative, such authorization to be evidenced by a certificate verifying the specimen signatures of such officers at the request of the Trustee.

“Consulting Engineer” means any qualified registered or licensed professional engineer practicing under the laws of the State of Idaho selected by the Municipality.

“Fiscal Year” means the fiscal year of the Municipality, beginning October 1 and ending September 30 each year.

“Generally Accepted Accounting Principles” means the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures,

## LOAN AGREEMENT - 2

and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

“Income Fund” means the fund by that name described in Section 4.2 hereof.

“Independent Certified Public Accountant” means any firm of certified public accountants appointed by the Municipality, which is independent of the Municipality and the Authority pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

“Issue Date” means the date of issuance of the Municipal Bond.

“Loan” means the loan of proceeds of the Bonds as described in Section 3.1 hereof.

“Maximum Annual Debt Service” means, as of any date of calculation, the largest Annual Debt Service during the period from the date of such calculation through the final maturity date of all Parity Debt.

“Municipal Bond” or “Municipal Bonds” means the revenue bond or other evidence of indebtedness issued and delivered by the Municipality to evidence the Loan as provided in Section 3.1 hereof.

“Municipality” means the City of Coeur D’Alene, Idaho, a municipal corporation of the State of Idaho and thereby a “Municipality” under the Act.

“Net Proceeds” means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys’ fees) incurred in the collection of such proceeds.

“Operation and Maintenance Costs” means all reasonable and necessary current expenses of the Municipality, paid or accruing, for operating, maintaining and repairing the System, including legal and overhead expenses of the municipality directly related to the administration of the System, insurance premiums, audits, charges of depository banks and paying agents, professional services, salaries, administrative expenses, labor, and the cost of materials and supplies for current operation, but not including depreciation, legal liabilities not based on contract, the cost of improvements to the System, charges for accumulation of reserves, or payment of Parity Debt or Subordinate Obligations.

“Parity Debt” means the Repayment Installments, any Prior Obligations, and any Parity Obligations.

“Parity Obligation Payments” means the payments scheduled to be paid by the Municipality under and pursuant to the Parity Obligations, which payments are secured by a pledge of System Net Revenues on parity with the Repayment Installments as provided herein.

“Parity Obligations” means all obligations of the Municipality authorized and executed by the Municipality other than the Repayment Installments, including any Prior Obligations with Parity Obligation Payments which are secured by a pledge of the System Net Revenues on parity with the Repayment Installments as provided herein, which Parity Obligations are specifically described in Schedule 1 hereto.

"Prior Note" means the Municipality’s Sewer Revenue Bonds, Series 2007, issued December 1, 2007, in a single maturity to the Idaho Department of Environmental Quality.

“Prior Obligations” means the obligations, if any, specified in Schedule 1 attached hereto.

“Project” means the Municipality’s sewer facilities as described in Exhibit A hereto being refinanced by the Municipal Bond.

“Rate Stabilization Account” means the Rate Stabilization Account established pursuant to Section 4.5 hereof.

“Repayment Amount” means the amount specified in Schedule 1 attached hereto.

“Repayment Installment” means any amount that the Municipality is required to pay directly to the Trustee pursuant to Section 3.2(a) of this Loan Agreement, as a repayment of the loan made to the Municipality under the Loan Agreement, which amount is determined in accordance with Section 4.2(a) thereof.

“Repayment Installment Date” means the dates corresponding to the Repayment Installments, as set forth in Exhibit B, however, payments must be transmitted to the Trustee at least fifteen (15) days prior to the Repayment Installment Dates on Exhibit B.

“Reserve Fund” means the reserve fund for the Loan in the amount of the Reserve Requirement and to be funded from funds of the Municipality if required as provided in Section 4.4 hereof. The Reserve Fund shall not secure the Parity Obligations.

“Reserve Requirement” shall mean the monies to be held by the Municipality in the Reserve Fund to secure payment of debt service on the Loan and the Municipal Bond which shall be an amount equal to the amounts required under Section 4.4 hereof, provided that said amount shall not exceed the lesser of: (i) 10% of the proceeds of the Loan, (ii) maximum annual principal and interest on the Loan, or (iii) 125% of average annual principal and interest on the Loan.

“Revenue Fund” means the fund so designated established pursuant to the Trust Agreement and held by the Trustee.

“Sewer Revenue Fund” means the Municipality’s Sewer Revenue Fund, established by the Bond Ordinance.

“Subordinate Obligations” means obligations of the Municipality that are subordinate in payment to the Repayment Installments and to the Parity Obligations Payments.

“System” means all of the Municipality’s Sewer system, and its Sewer facilities and properties now owned or hereafter acquired, whether situated within or without Municipality boundaries.

“System Net Revenues” means the remaining System Revenues after deducting Operation and Maintenance Costs.

“System Revenues” means all gross income and revenue received or receivable by the Municipality from the ownership or operation of the System, determined in accordance with Generally Accepted Accounting Principles, excluding grants, hookup fees and other non recurring revenue, but including without limitation, transfers from the Rate Stabilization Account and including all fees (excluding connection fees), rates, charges and all amounts paid under any contracts received by or owed to the Municipality in connection with the operation of the System and all proceeds of insurance relating to the System and investment income allocable to the System and all other income and revenue howsoever derived by the Municipality from the ownership, or operation of the System or arising from the System.

**Section 1.2 Number and Gender.** The singular form of any word used herein, including the terms defined in Section 1.01 of the Trust Agreement, shall include the plural, and vice versa. The use herein of a word of any gender shall include all genders.

**Section 1.3 Articles, Sections, Etc.** Unless otherwise specified, references to Articles, Sections and other subdivisions of this Loan Agreement are to the designated Articles, Sections and other subdivisions of this Loan Agreement as originally executed. The words “hereof,” “herein,” “hereunder” and words of similar import refer to this Loan Agreement as a whole. The headings or titles of the several articles and sections, and the table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

## **ARTICLE II – REPRESENTATIONS**

**Section 2.1 Representations of the Municipality.** The Municipality makes the following representations as the basis for its undertakings herein contained:

- (a) The Municipality is a municipal corporation in the State of Idaho. Under the provisions the Act, the Municipality has the power to enter into the transactions contemplated by this Loan Agreement and to carry out its obligations hereunder. By proper action, the Municipality has authorized the Municipal Bond evidencing its obligations under this Loan Agreement in accordance with Title 50, Chapter 10 of the Idaho Code, as amended. By proper action, the Municipality has been duly authorized to execute, deliver and duly perform this Loan Agreement.

(b) The Municipality is not in default under any of the provisions of the laws of the State of Idaho which default would affect its existence or its powers referred to in subsection (a) of this Section 2.1.

(c) The Municipality has found and determined and hereby finds and determines that all requirements of the Act with respect to the execution of this Loan Agreement have been complied with and that financing the Project by entering into this Loan Agreement will be in furtherance of the purposes of the Act.

(d) The Project consists and will consist of the refinancing of the facilities described in Exhibit A hereto and the redemption of the Prior Note. The Municipality shall make no changes to any portion of the Project or to the operation thereof which would impair the exemption from gross income of the interest on the Bonds or the Municipal Bond for federal income tax purposes. In particular, the Municipality shall comply with all requirements of its Federal Tax Exemption Certificate, dated the Issue Date (the "Tax Certificate"), which is hereby incorporated by reference herein.

**Section 2.2 Representations of the Authority.** The Authority makes the following representations as the basis for its undertakings herein contained:

(a) The Authority is an independent public body corporate and politic duly formed under the laws of the State of Idaho and has the power to enter into and has duly authorized the execution and delivery of the Trust Agreement, this Loan Agreement and all other documents contemplated hereby to be executed by the Authority.

(b) The execution and delivery of the Bonds, this Loan Agreement, and the Trust Agreement and the consummation of the transactions contemplated hereby and thereby do not conflict with or constitute a breach of or default under the Act or, to the best knowledge of the Authority, under the terms and conditions of any agreement or commitment to which the Authority is a party or by which the Issuer is bound.

(c) The Authority will issue, execute and deliver the Bonds upon the terms and conditions set forth in the Trust Agreement and will use a portion of proceeds of the issuance of the Bonds for the Loan to finance the Project in accordance with this Loan Agreement.

### **ARTICLE III - LOAN TO MUNICIPALITY; REPAYMENT PROVISIONS**

**Section 3.1 Loan to Municipality;** The Authority covenants and agrees, upon the terms and conditions in this Loan Agreement, to make a Loan of the amount specified in Schedule 1 attached hereto to the Municipality for the purpose of refunding the "Prior Note", which financed the Project. The Loan is based on the purchase price of the Municipal Bond at the par amount thereof plus a premium or less a discount as described in Schedule 1 hereto. Said Loan shall be disbursed as described in Schedule 1 hereto and the Municipality will contribute funds to the Project to the extent described by Schedule 1. Pursuant to said covenant and agreement, the

Authority will issue the Bonds upon the same terms and conditions contained in this Loan Agreement and the Trust Agreement and will cause the Bond proceeds to be applied as provided in Article III thereof. The Municipality shall issue and sell its Municipal Bond to the Authority as evidence of its Loan obligation hereunder and the payments due on the Municipal Bond shall equal the Repayment Installments hereunder.

**Section 3.2 Repayment and Payment of Other Amounts Payable.**

(a) The Municipality covenants and agrees to pay to the Trustee the Repayment Installments together with the Annual Expense Charges and all other amounts then due hereunder on the Loan to the Municipality pursuant to Section 3.1 hereof, at least fifteen (15) days prior to the Repayment Installment Dates as set forth in Exhibit B hereto. The Trustee shall transmit the Annual Expense Charges to the Authority.

Any amount held by the Trustee in the Revenue Fund on the Municipality's behalf on any Repayment Installment Date hereunder shall be credited against the Repayment Installment due on such date to the extent available for such purpose; and provided further that, subject to the provisions of this paragraph, if at any time the amounts held by the Trustee in the Revenue Fund on the Municipality's behalf are sufficient to pay all of the Repayment Installments, the Municipality shall be relieved of any obligation to make any further payments under the provisions of this Section. Notwithstanding the foregoing, if on any date the amount held by the Trustee in the Revenue Fund on the Municipality's behalf is insufficient to make any required Repayment Installment on any Repayment Installment Date, the Municipality shall forthwith pay such deficiency as a Repayment Installment hereunder.

(b) Upon written request of the Trustee, the Municipality shall pay any Repayment Installment directly to the Trustee.

**Section 3.3 Unconditional Obligation.** The obligations of the Municipality to make the payments required by Section 3.2 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the Authority, and during the term of this Loan Agreement, the Municipality shall pay absolutely net the payments to be made on account of the loan as prescribed in Section 3.2 and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off; provided, that the Municipality's obligation to make payments under this Loan Agreement shall be limited to the extent of System Net Revenues and other legally available funds of the Municipality to be appropriated as needed to make the payments required under this Agreement and the Municipal Bond, and is not a general obligation of the Municipality provided that the State Intercept under Section 3.6 hereof shall apply. Until such time as the Repayment Installments shall have been paid in full (or provision for the payment thereof shall have been made pursuant to Article VIII of this Loan Agreement), the Municipality (i) will not suspend or discontinue any payments provided for in Section 3.2 hereof; (ii) will perform and observe all of its other covenants contained in this Loan Agreement; and (iii) will not terminate this Loan Agreement for any



cause, including, without limitation, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Idaho or any political subdivision of either of these, or any failure of the Authority or the Trustee to perform and observe any covenant, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement or the Trust Agreement, except to the extent permitted by this Loan Agreement.

**Section 3.4 Assignment of Authority's Rights.** As security for the payment of the Bonds, the Authority will assign to the Trustee the Authority's rights, but not its obligations, under this Loan Agreement, including the right to receive payments hereunder (except (i) the rights of the Authority to receive notices under this Loan Agreement, (ii) the right of the Authority to receive certain payments, if any, with respect to fees, expenses and indemnification and certain other purposes under Sections of this Loan Agreement, and (iii) the right of the Authority to give approvals or consents pursuant to this Loan Agreement) and the Authority hereby directs the Municipality to make the payments required hereunder (except such payments for fees, expenses and indemnification) directly to the Trustee. The Municipality hereby assents to such assignment and agrees to pay the Repayment Installments directly to the Trustee (subject to the provisions of Section 3.2(b)) without defense or set-off by reason of any dispute between the Municipality and the Authority or the Trustee.

**Section 3.5 Amounts Remaining in Funds.** It is agreed by the parties hereto that after payment in full of (i) the Repayment Installments, or after provision for such payment shall have been made as provided in Article XIII, (ii) the fees and expenses of the Authority in accordance with this Loan Agreement, (iii) the fees, charges and expenses of the Trustee, the Registrar and Paying Agent in accordance with the Trust Agreement and this Loan Agreement and (iv) all other amounts required to be paid under this Loan Agreement and the Trust Agreement, any amounts remaining in any fund held by the Trustee under the Trust Agreement shall belong, subject to the requirements of Section 7.03 of the Trust Agreement, to the Authority and be paid to the Authority by the Trustee, provided that any earnings on payments by the Municipality to the Trustee under Section 3.2(a) prior to the Repayment Installment Dates shall be deducted from said remaining amounts and credited to the Municipality.

**Section 3.6 Timeliness Of Payments; Consent to State Intercept; Repayment.**

(a) The Municipality understands that the State intercept and repayment procedures contained in and required by Section 67-8727, Idaho Code, as amended, and as set forth herein operate as a matter of law with respect to the Loan covered by this Loan Agreement without the need for consent thereto by the Municipality. The Municipality also understands that said intercept procedures will provide funds to pay the Authority Bonds (not the Loan obligations).

(b) If the Municipality is unable to transfer all of its Repayment Installment to the Trustee at least 15 days before the Repayment Installment Date, the Municipality shall immediately notify the Trustee, the Authority and the State Treasurer by: (i) telephone;

(ii) a writing sent by facsimile transmission; and (iii) a writing sent by first-class United States mail. If sufficient funds are not transferred to the Trustee for the Bonds of the Authority that are secured by this Loan Agreement at least ten (10) days before the scheduled debt service payment date of the Bonds, the Trustee shall transfer any available funds pledged to secure payment of the Bonds in sufficient amounts to make up any shortfall in the amount necessary to pay debt service on the Bonds on the scheduled payment date and deposit such amount in the debt service payment fund for those Bonds.

(c) If, as a result of the failure of the Municipality to make Repayment Installments in a timely manner, the Trustee shall transfer funds pursuant to paragraph (b) of this section to pay debt service on the Bonds or if there are not sufficient funds available pursuant to paragraph (b) of this section to make up for any shortfall in the amount necessary to pay debt service on the Bonds, at least ten (10) days before the scheduled debt service payment date of the Bonds, the Trustee shall notify the Authority and the State Treasurer by: (i) telephone; (ii) a writing sent by facsimile transmission; and (iii) a writing sent by first-class United States mail.

(d) To the extent provided and required by Section 67-8727, Idaho Code, as amended, and upon the notice provided in subsection (c) of this section, the State Treasurer shall (i) immediately intercept to the extent permitted by law any payments available from: (A) the receipts of any payment of property taxes; or (B) sales tax moneys that would be distributed pursuant to section 63-3638, Idaho Code; or (C) liquor tax moneys that would be distributed pursuant to Section 23-404, Idaho Code, as amended; or (D) any other source of operating moneys provided by the State to the Municipality that would otherwise be paid to the Municipality by the State.

(e) If the State has made all or part of a Repayment Installment on behalf of the Municipality from moneys representing sales tax receipts transferred from the State general fund pursuant to Section 67-8716, Idaho Code, the Municipality shall: (a) reimburse all moneys drawn by the State Treasurer on its behalf; (b) pay interest to the State on all moneys paid by the State from the date the moneys are drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus five percent (5%); and (c) pay all penalties required by the Act.

(f) The State Treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the Municipality on the State, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the State to make Repayment Installments.

(g) The State Treasurer may, after considering the circumstances giving rise to the failure of the Municipality to make its Repayment Installments in a timely manner, impose on the Municipality a penalty of not more than five percent (5%) of the amount paid by the State for each instance in which a payment by the State is made.

- (h) (i) If the State Treasurer determines that amounts obtained under this section will not reimburse the State in full within one (1) year from the State's payment of the Municipality's scheduled Repayment Installments, the State Treasurer shall, subject to clause (ii) hereof, pursue any legal action, including mandamus, against the Municipality to compel it to take any action required by the Act, including:
- (1) To the extent permitted by law provide System Net Revenues or other legally available funds to pay Repayment Installments when due; and
  - (2) Meet its repayment obligations to the State.
- (ii) In pursuing its rights under paragraph (i) of this subsection (h), the State shall have the same substantive and procedural rights as would a holder of this Loan Agreement.
- (iii) The attorney general shall assist the State Treasurer in these duties.
- (iv) The Municipality shall pay the attorney's fees, expenses and costs of the State Treasurer and the State attorney general.

#### **ARTICLE IV – SECURITY**

**Section 4.1 Pledge of System Net Revenues.** All System Net Revenues and other legally available funds of the Municipality to be appropriated as needed to make the payments required under this Loan Agreement and the Municipal Bond, are hereby irrevocably pledged to the payment of the Repayment Installments as provided herein and the System Net Revenues and such other funds shall not be used for any other purpose while any of the Repayment Installments remain unpaid; *provided* that (i) any Parity Obligations shall be paid on parity with the Repayment Installments, (ii) out of the System Net Revenues and such other funds there may be apportioned such sums for such purposes as are expressly permitted herein. This pledge, together with the pledge created by all other Parity Debt, shall constitute a first lien on System Net Revenues and, subject to application of amounts on deposit therein as permitted herein, the Income Fund and other funds and accounts created hereunder for the payment of the Repayment Installments and all other Parity Debt in accordance with the terms hereof and of the Trust Agreement.

**Section 4.2 Allocation of System Revenues.** In order to carry out and effectuate the pledge and lien contained herein, the Municipality agrees and covenants that all System Revenues shall be received by the Municipality in trust hereunder and shall be deposited when and as received in the "Sewer Revenue Fund", a special fund hereby designated as the "Income Fund", which fund is hereby established and which fund the Municipality agrees and covenants to maintain and to hold separate and apart from other funds so long as any Repayment Installments remain unpaid. To the extent the Municipality has an existing fund which satisfies the foregoing requirements, then such shall be deemed to be the "Income Fund" and the Municipality shall not be required to create a new

fund. The Municipality may maintain separate accounts within the Income Fund. The amounts in the Income Fund shall be invested in investments permitted by State law. Moneys in the Income Fund shall be used and applied by the Municipality as provided in this Loan Agreement.

The Municipality shall, from the moneys in the Income Fund, pay all Operation and Maintenance Costs (including amounts reasonably required to be set aside in contingency reserves for Operation and Maintenance Costs, the payment of which is not then immediately required) as such Operation and Maintenance Costs become due and payable. Thereafter, all remaining moneys in the Income Fund shall be set aside by the Municipality at the following times for the transfer to the following respective special funds in the following order of priority; and all moneys in each of such funds shall be held in trust and shall be applied, used and withdrawn only for the purposes set forth in this Section.

(a) **Repayment Installments.** Not later than fifteen (15) days prior to each Repayment Installment Date, the Municipality shall, from the moneys in the Income Fund, transfer to the Trustee the Repayment Installment due and payable on that Repayment Installment Date. The Municipality shall also, from the moneys in the Income Fund, transfer to the applicable trustee, if any, for deposit in the respective payment fund, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other Parity Obligation Payments in accordance with the provisions of any Parity Obligation.

(b) **Surplus.** Moneys on deposit in the Income Fund not necessary to make any of the payments required above, may be expended by the Municipality at any time for any purpose permitted by law, including but not limited to payments with respect to Subordinate Obligations.

**Section 4.3 Additional Parity Debt.** The Municipality may at any time enter into any Parity Debt; *provided:*

(a) The Municipality shall be in compliance with all agreements, conditions, covenants and terms contained herein, and a Certificate of the Municipality to that effect shall have been filed with the Trustee;

(b) The Parity Debt shall have been duly authorized pursuant to all applicable laws;

(c) The most recent available audit of the Municipality shows that the System Net Revenues for the Fiscal Year immediately preceding the date of the resolution authorizing the Parity Debt shall have been sufficient to pay an amount representing 125% of Maximum Annual Debt Service;

(d) As an alternative to the audit report requirement in 4.3(c), the Municipality may utilize a report of the Consulting Engineer that shows that the System Net Revenues for the remainder of the projected life of the Parity Debt will be at least equal to 125% of the

Maximum Annual Debt Service. In determining whether Parity Debt may be issued, the Consulting Engineer shall consider any probable increase (but not decrease) in Operation and Maintenance Costs, and there may be added to such System Net Revenues an allowance for net revenues from any improvements to the System to be made with the proceeds of such Parity Debt and also for net revenues from any improvements to the System which have been made from money from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated additional average annual net revenues to be derived from each such improvement for the first 36 month period in which each such improvement is in operation.

Nothing contained in this Section shall limit the issuance of any additional obligations of the Municipality payable from the System Net Revenues and secured by a lien and charge on the System Net Revenues if, after the issuance and delivery of such additional obligations, none of the Repayment Installments shall be unpaid. Furthermore, nothing contained in this Section shall limit the issuance of any Parity Debt for the purpose of refunding Outstanding Parity Debt or for any Subordinate Obligations.

#### **Section 4.4 Reserve Fund Deposit**

There shall be established a Reserve Fund held by the Municipality funded from funds of the Municipality and/or Proceeds of the Municipal Bond in an amount equal to the Reserve Requirement to be maintained as a debt service reserve fund for the Loan as evidenced by the Municipal Bond. Such Reserve Fund shall secure only the Municipal Bond and shall be drawn upon if needed to make the Repayment Installments hereunder. The Municipality shall notify the Trustee of any drawing on the Reserve Fund within ten (10) days of the date of such drawing. Provided further, in the event that a drawing on the said Reserve Fund in order to make the Repayment Installments by the Municipality on the Loan results in a balance in such fund lower than the Reserve Requirement, the Municipality shall replenish said account to the Reserve Requirement from System Net Revenues as soon as possible, but not later than one (1) year from the date of the said drawing.

**Section 4.5 Rate Stabilization Account.** The Municipality shall establish and maintain a Rate Stabilization Account. Monies in the Rate Stabilization Account may be transferred as determined from time to time by the Municipality. The Municipality may transfer funds into the Rate Stabilization Account from the Income Fund (Sewer Revenue Fund) or any other legally available source. The Municipality may transfer funds into the Rate Stabilization Account or withdraw funds from the Rate Stabilization Account at any time without limitation subject to the following provisions.

- (a) Money in the Rate Stabilization Account may be withdrawn at any time and used for any purpose for which System Revenues may be used. Amounts withdrawn from the Rate Stabilization Account shall increase System Revenues for the period for which they are withdrawn, and amounts deposited in the Rate Stabilization Account shall reduce System Revenues for the period for which they are deposited. Credits from the Rate Stabilization Account may be posted in accordance with governmental accounting

practices and procedures. Credits to or from the Rate Stabilization Account may relate to a prior Fiscal Year consistent with governmental accounting practices and procedures provided that such credits occur within the first quarter following the prior Fiscal Year. Earnings on the Rate Stabilization Account shall be credited to the Income Fund (the Sewer Revenue Fund) and shall be included in the definition of System Revenues for purposes of calculating debt service coverage.

(b) Unless otherwise excluded, funds withdrawn from the Rate Stabilization Account shall be included as System Net Revenues for all rate requirement purposes under Section 5.11 hereof.

**Section 4.6. Transfers from Rate Stabilization Account.** The Municipality may transfer funds from the Rate Stabilization Account to satisfy the rate requirements in Section 5.11 hereof. If the Municipality transfers funds from the Rate Stabilization Account during the current Fiscal Year or within the first quarter of the following Fiscal Year and designates that such transfer shall relate to the immediately preceding Fiscal Year it covenants for the benefit of the Authority and its bondholders that going forward it will, as needed, charge rates and fees in connection with operation of the System which, when combined with other System Revenues, are adequate to generate System Net Revenues (exclusive of transfers from the Rate Stabilization Account) in the following Fiscal Year at least equal to 1.25 times the Annual Bond Debt Service due in that Fiscal Year. The Municipality will demonstrate its compliance with the provisions of this Section 4.6 by providing a report to the Authority and the Trustee, if any, at the time of delivery of the Municipality's year-end audit that the Municipality is not out of compliance with Section 5.11. This report will demonstrate the Municipality's compliance with this covenant, or the methods by which the Municipality intends to achieve compliance with this covenant.

## ARTICLE V - SPECIAL COVENANTS AND AGREEMENTS

**Section 5.1 Punctual Payment.** The Municipality will punctually pay all Repayment Installments in strict conformity with the terms hereof and will faithfully satisfy, observe and perform all agreements, conditions, covenants and terms hereof.

**Section 5.2 Legal Existence.** The Municipality will use all means legally available to maintain its existence.

**Section 5.3 Against Encumbrances.** The Municipality will not mortgage or otherwise encumber, pledge or place any charge upon any of the System Net Revenues except as provided herein, and will not issue any obligations secured by System Net Revenues senior to the Parity Debt; *provided*, that the Municipality may at any time issue any Subordinate Obligations.

**Section 5.4 Against Sale or Other Disposition of the System.** The Municipality will not sell or otherwise dispose of the System or any part thereof essential to the proper operation of the System or to the maintenance of the System Net Revenues, unless the Repayment Installments have been fully paid or provision has been made therefor in accordance with Article VIII hereof.

The Municipality will not enter into any lease or agreement which impairs the operation of the System or any part thereof necessary to secure adequate System Net Revenues for the payment of the Repayment Installments, or which would otherwise impair the rights of the Owners with respect to the System Net Revenues or the operation of the System.

**Section 5.5 Maintenance and Operation of System.** The Municipality agrees that as long as it owns the System it will (i) maintain, or cause to be maintained, the System in as reasonably safe condition as its operations shall permit and (ii) maintain, or cause to be maintained, the System in good repair and in good operating condition, ordinary wear and tear excepted, making from time to time all necessary repairs thereto and renewals and replacements thereof.

**Section 5.6 Right of Access to the System.** The Municipality agrees that during the term of this Loan Agreement, the Authority, the Trustee and the duly authorized agents of either of them shall have the right at all reasonable times during normal business hours to enter upon the site of the System to examine and inspect such System; provided, however, that this right is subject to federal and State of Idaho laws and regulations applicable to such site. The rights of access hereby reserved to the Authority and the Trustee may be exercised only after such agent shall have executed release of liability (which release shall not limit any of the Municipality's obligations hereunder) and secrecy agreements if requested by the Municipality in the form then currently used by the Municipality, and if the Trustee is the signatory, as agreed to by the Trustee, and nothing contained in this Section or in any other provision of this Loan Agreement shall be construed to entitle the Authority or the Trustee to any information or inspection involving the confidential knowledge of the Municipality.

**Section 5.7 Tax Exempt Status of Bonds.**

(a) It is the intention of the parties hereto that interest on the Bonds, shall be and remain excluded from gross income for federal income tax purposes. To that end, the covenants and agreements of the Authority and the Municipality in this Section and in the Tax Certificate are for the benefit of the Trustee and each and every person who at any time will be a holder of the Bonds and the Municipal Bond. Without limiting the generality of the foregoing, the Municipality and the Authority agree that there shall be paid from time to time the "Municipality's Share" of all amounts required to be rebated to the United States pursuant to the rebate requirement with respect to the Bonds (the "Rebate Requirement") under Section 148 of the Code and the Tax Certificate. The "Municipality's Share" means the amount of the Rebate Requirement relating to the Municipal Bond, determined as specified in the Tax Certificate, including (i) treating as the yield on the Municipal Bond the yield on the Bonds allocated to the Municipal Bond and (ii) treating any amounts held by the Authority and allocable to the Municipal Bond as proceeds of the Municipal Bond. This covenant shall survive payment in full or defeasance of the Bonds and the Municipal Bond. The Municipality specifically covenants to pay or cause to be paid for and on behalf of the Authority to the United States at the times and in the amounts determined under Section 7.03 of the Trust Agreement the Municipality's share of the Rebate Requirement as described in the Tax

Certificate and the Trust Agreement. The Authority shall not be liable to make any such payment except from funds provided by the Municipality for such purpose.

(b) The Authority covenants and agrees that it has not taken and will not take any action which results in interest to be paid on the Bonds being included in gross income of the holders of the Bonds for federal income tax purposes, and the Municipality covenants and agrees that it has not taken or permitted to be taken and will not take or permit to be taken any action which will cause the interest on the Bonds to become includable in gross income for federal income tax purposes. The Municipality acknowledges having read Section 7.03 of the Trust Agreement and agrees to perform all duties imposed on it by such Section, by this Section and by the Tax Certificate. Insofar as Section 7.03 of the Trust Agreement and the Tax Certificate impose duties and responsibilities on the Authority or the Municipality, they are specifically incorporated herein by reference.

(c) Notwithstanding any provision of this Section 5.7 or Section 7.03 of the Trust Agreement, if the Municipality shall provide to the Authority and the Trustee an Opinion of Bond Counsel to the effect that any specified action required under this Section 5.7 and Section 7.03 of the Trust Agreement is no longer required or that some further or different action is required to maintain the exclusion from federal income tax of interest on the Bonds or Municipal Bond, the Municipality, the Trustee and the Authority may conclusively rely on such opinion in complying with the requirements of this Section, and the covenants set forth in this Section 5.7 shall be deemed to be modified to that extent.

(d) The Municipality agrees to comply with the Authority's Post Issuance Tax Compliance Procedures, the current form of which is attached hereto as Exhibit F.

**Section 5.8 Notices to Trustee and Authority.** The Municipality hereby agrees to provide the Trustee and the Authority with notice of any event of which it has knowledge which, with the passage of time or the giving of notice, would be an Event of Default, such notice to include a description of the nature of such event and what steps are being taken to remedy such Event of Default.

**Section 5.9 Continuing Disclosure.** The Municipality hereby covenants and agrees to comply with the continuing disclosure requirements for the Bonds as promulgated under Rule 15c2-12, as it may from time to time hereafter be amended or supplemented, including those requirements set forth below. Notwithstanding any other provision of this Agreement, failure of the Municipality to comply with the requirements of Rule 15c2-12 applicable to the Bonds, as it may from time to time hereafter be amended or supplemented, shall not be considered an Event of Default hereunder or under the Trust Agreement; however, any Bondholder or beneficial owner of any Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Municipality to comply with its obligations pursuant to this Section 5.9.



(a) Definitions. In addition to the definitions set forth in the Trust Agreement, which apply to any capitalized term used in this Section unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Municipality pursuant to, and as described in, Sections 5.9(b) and 5.9(c).

“Beneficial Owner” shall mean any person who has the power, directly or indirectly, to vote or consent with respect to, or dispose of ownership of, any of the Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Treasurer of the Municipality or his or her designee, or such other officer or employee as the Municipality shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Municipality and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access System of the Municipal Securities Rulemaking Board as provided for by the SEC, found at [www.emma.msrb.org](http://www.emma.msrb.org).

“Listed Events” shall mean any of the events listed in Section 5.9(d) hereof.

“Owner” means an owner of the Bonds and includes Beneficial Owners.

“Participating Underwriter” shall mean any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Repository” shall mean the Municipal Securities Rule Making Board (“MSRB”) or any other entity designated or authorized by the SEC to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the SEC, filings with the MSRB are to be made through EMMA.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“SEC” means the Securities and Exchange Commission.

(b) Provision of Annual Reports.

(i) The Municipality shall, with the assistance of the Dissemination Agent, not later than six months after the end of the Municipality's fiscal year (presently September 30), commencing with the report for the 2012 Fiscal Year, provide to the Repository and the Authority an Annual Report which is consistent with the requirements of Section 5.9(c) hereof. The filing shall be transmitted by the Dissemination Agent to the Repository and each Annual Report must be submitted in electronic format, accompanied by such identifying information as is prescribed by the Repository, and may include by reference other information as provided in Section 5.9(c) hereof; provided that the audited financial statements of the Municipality may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Municipality's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5.9(d)(vii).

(ii) Not later than fifteen (15) Business Days prior to the date specified in subsection (b)(i) for providing the Annual Report to the Repository, the Municipality shall provide the Annual Report, to the Dissemination Agent, to the Trustee (if the trustee is not the Dissemination Agent) and to the Authority. If by fifteen (15) Business Days prior to the date specified in subsection (b)(i), the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Municipality to determine if the Municipality is unable to provide or cause to be provided the Annual Report to the Dissemination Agent in compliance with the first sentence of this subsection (ii). Failure to provide the Annual Report to the Dissemination Agent by said date may subject the Municipality to late fees in the amount as listed on Exhibit E and payment of any expenses of the Trustee or the Authority in enforcing this provision. If the Municipality has prior loans with the Authority, then those loans shall be subject to the same provisions.

(iii) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the Repository by the date required in subsection (i) the Dissemination Agent shall send a notice to the Repository in substantially the form as Exhibit D2 attached.

(iv) The Dissemination Agent (currently the Trustee) shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of the Repository; and

(2) file a report with the Municipality, the Authority and the Trustee (if the Dissemination Agent is not the Trustee) certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided to the Repository.

(c) Content of Annual Reports. The Municipality's Annual Report shall contain or include by reference the following:

(i) The audited financial statements for the Municipality for the most recently ended fiscal year, currently prepared, to the extent feasible, in substantial conformance with generally accepted accounting principles applicable from time to time to governmental entities, with any permitted exception and an adopted budget for the then current fiscal year.

(ii) An Annual Report in the form attached hereto as Exhibit D1 as to outstanding debt, litigation, compliance with regulatory matters and related items.

(d) Reporting of Significant Events.

(i) Pursuant to the provisions of this Section 5, the Municipality shall give or cause to be given, notice of the occurrence of any of the following Events with respect to the Bonds in a timely manner not more than ten (10) Business Days after the event:

(1) Principal and interest payment delinquencies.

(2) Unscheduled draws on debt service reserves reflecting financial difficulties;

(3) Unscheduled draws on credit enhancements reflecting financial difficulties;

(4) Substitution of credit or liquidity providers, or their failure to perform;

(5) Adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;

(6) Defeasances;

(7) Tender offers;

(8) Bankruptcy, insolvency, receivership or similar proceedings;

(9) Rating changes;

(ii) Pursuant to the provisions of this Section 5, the Borrower shall give or cause to be given, notice of the occurrence of any of the following Events with

respect to the Bonds in a timely manner not more than ten (10) Business Days after the event, if material:

- (1) Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated persons or their termination.
- (2) Appointment of a successor or additional trustee or the change of the name of trustee;
- (3) Non-payment related defaults;
- (4) Modifications to the rights of the owners of the Bonds;
- (5) Bond calls;
- (6) Release, substitution or sale of property securing repayment of the Bonds.

(iii) The Dissemination Agent shall, within one (1) Business Day of obtaining actual knowledge of the occurrence of any of the Listed Events, contact the Disclosure Representative, inform such person of the event, and request that the Municipality promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to subsection (vii). The Dissemination Agent shall have no duty or obligation to determine whether such Listed Events reflect financial difficulty or to determine the materiality of such Listed Events when informing the Disclosure Representative of such Listed Event.

(iv) Whenever the Municipality obtains knowledge of the occurrence of a Listed Event under (ii) whether because of a notice from the Dissemination Agent pursuant to subsection (iii) or otherwise, the Municipality shall as soon as possible determine if such event would be material under applicable federal securities laws.

(v) If the Municipality has determined that knowledge of the occurrence of a Listed Event under (ii) would be material under applicable federal securities laws, the Municipality shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (vii).

(vi) If in response to a request under subsection (iii), the Municipality determines that the Listed Event would not be material under applicable federal securities laws, the Municipality shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (vii).

(vii) If the Dissemination Agent has been instructed by the Municipality to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the Repository.

(e) Termination of Reporting Obligation. The Municipality's obligations under this Disclosure Agreement shall terminate upon the legal defeasance or discharge of this Loan Agreement in accordance with Section 8.1. If such termination occurs prior to the final maturity of the Municipal Bonds, the Municipality shall give notice of such termination in the same manner as for a Listed Event under Section 5.9(d)(vii).

(f) Dissemination Agent. The Municipality may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement and shall pay the fees and costs thereof, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Municipality pursuant to this Disclosure Agreement. The initial Dissemination Agent shall be the Trustee. It is understood and agreed that any information that the Dissemination Agent may be instructed to file with the Municipal Securities Rulemaking Board and the Repository shall be prepared and provided to it by the Municipality. The fact that the Dissemination Agent or any affiliate thereof may have any fiduciary or banking relationship with the Municipality shall not be construed to mean that the Dissemination Agent has actual knowledge of any event or condition except as may be provided by written notice from the Municipality as the Authority.

(g) Amendment; Waiver. Notwithstanding any other provision of this Section 5.9, the Municipality and the Authority (or upon assignment of this Loan Agreement by the Authority, the Trustee) may amend this Section 5.9 (and the Trustee shall agree to any amendment so reasonably requested by the Municipality, to the extent that such amendment does not adversely affect the Trustee's or the Dissemination Agent's rights, protections or duties), and any provision of this Section 5.9 may be waived, provided that the following conditions are satisfied:

(i) If the amendment or waiver relates to the provisions of Section 5.9(b)(i), Section 5.9(c), or Section 5.9(d)(i) or (ii), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(ii) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(iii) The amendment or waiver either (1) is approved by the Owners of the Bonds in the same manner as provided in the Trust Agreement for amendments to the Trust Agreement with the consent of Owners, or (2) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners and Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Section 5.9, the Municipality shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Municipality. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Listed Event under Section 5.9(d)(vi), and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

(h) Additional Information. Nothing in this Section 5.9 shall be deemed to prevent the Municipality from disseminating any other information, using the means of dissemination set forth in this Section 5.9 or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Section 5.9. If the Municipality chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Section 5.9, the Municipality shall have no obligation under this Section 5.9 to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

(i) Duties, Immunities and Liabilities of Trustee and Dissemination Agent. The Dissemination Agent (if other than the Trustee or the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Section 5.9, and the Municipality agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Municipality under this Section shall survive resignation or removal of the Dissemination Agent and payment of this Loan Agreement. The Dissemination Agent shall have the same rights and protections as afforded to it in its role as trustee under the Trust Agreement.

(j) Notices. Any notices or communications to or among any of the parties to this Section 5.9 may be given at their addresses as set forth in the Trust Agreement and this Loan Agreement.

(k) Beneficiaries. This Section 5.9 shall inure solely to the benefit of the Municipality, the Authority, the Trustee, the Dissemination Agent, the Participating Underwriters, Beneficial Owners and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 5.10 Eminent Domain Proceeds.** If all or any part of the System shall be taken by eminent domain proceedings, the Net Proceeds realized by the Municipality therefrom shall be deposited by the Municipality with the Trustee in a special fund which the Trustee shall establish as needed in trust and applied by the Municipality to the cost of acquiring and constructing additions, betterments, extensions or improvements to the System if (A) the Municipality first secures and files with the Trustee a Certificate of the Municipality showing (i) the loss in annual System Revenues, if any, suffered, or to be suffered, by the Municipality by reason of such eminent domain proceedings, (ii) a general description of the additions, betterments, extensions or improvements to the System then proposed to be acquired and constructed by the Municipality from such proceeds, and (iii) an estimate of the additional System Revenues to be derived from such additions, betterments, extensions or improvements; and (B) the Trustee has been furnished a Certificate of the Municipality, certifying that such additional System Revenues will sufficiently offset on a timely basis the loss of System Revenues resulting from such eminent domain proceedings so that the ability of the Municipality to pay Repayment Installments when due will not be substantially impaired, and such Certificate of the Municipality shall be final and conclusive, and any balance of such Net Proceeds not required by the Municipality for such purpose shall be deposited in the Income Fund and applied as provided in Section 4.2 hereof, *provided*, that if the foregoing conditions are not met, then such Net Proceeds shall be deposited with the Trustee and applied to make Repayment Installments as they come due and Parity Obligation Payments as they shall become due; *provided further* that the foregoing procedures for the application of Net Proceeds shall be subject to any similar provisions for Parity Debt on a pro rata basis.

If such eminent domain proceedings have had no effect, or at most an immaterial effect, upon the System Revenues and the security of the Repayment Installments, and a Certificate of the Municipality to such effect has been filed with the Trustee, then the Municipality shall forthwith deposit such Net Proceeds in the Income Fund, to be applied as provided in Section 4.2 hereof.

**Section 5.11 Amounts of Rates, Fees and Charges.**

(a) The Municipality will, at all times while any of the Repayment Installments remain unpaid, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year so as to yield System Revenues at least sufficient, after making reasonable allowances for contingencies and errors in the estimates, to pay the following amounts during such Fiscal Year:

(i) All current Operation and Maintenance Costs.

(ii) The Repayment Installments and the payments for the other Parity Debt and the payment of the Subordinate Obligations as they become due and payable.

(iii) All payments required for compliance with the terms hereof.

(iv) All payments to meet any other obligations of the Municipality which are charges, liens or encumbrances upon, or payable from, the System Net Revenues.

(b) In addition to the requirements of the foregoing subsection (a) of this Section, the Municipality will, at all times while any Repayment Installments remain unpaid, to the maximum extent permitted by law, fix, prescribe and collect rates, fees and charges and manage the operation of the System for each Fiscal Year, plus any credits from the Rate Stabilization Account in accordance with Sections 4.5 and 4.6 hereof, so as to yield System Net Revenues during such Fiscal Year equal to at least 125% of the Annual Debt Service in such Fiscal Year. If the Municipality is unable to meet this requirement, it will retain a Consulting Engineer to provide recommendations or adjustments to rates or modifications to operations to produce the necessary amount of system net revenues specified above in this subsection of this Loan Agreement.

(c) If Municipality shall fail to comply with Section 5.11(a) or (b) above and is unable to bring itself into compliance within sixty (60) days thereafter, it shall immediately notify the Authority and the Trustee.

The Municipality may make or permit to be made adjustments from time to time in such rates, fees and charges and may make or permit to be made such classification thereof as it deems necessary, but shall not reduce or permit to be reduced such rates, fees and charges below those then in effect unless the System Revenues from such reduced rates, fees and charges will at all times be sufficient to meet the requirements of this Section.

**Section 5.12 Enforcement of and Performance Under Contracts.** The Municipality shall enforce all material provisions of any contracts to which it is a party, an assignee, successor in interest to a party or third-party beneficiary, in any case where such contracts provide for material payments or services to be rendered to the System. Further, the Municipality will comply with, keep, observe and perform all material agreements, conditions, covenants and terms, express or implied, required to be performed by it, contained in all contracts affecting or involving the System, to the extent that the Municipality is a party thereto.

**Section 5.13 Collection of Charges, Fees and Rates.** The Municipality will have in effect at all times rules and regulations requiring each user of the System to pay the applicable charges, fees and rates and providing for the billing thereof and for a due date and a delinquency date for each bill. In each case where such bill remains unpaid in whole or in part after it becomes delinquent, the Municipality will enforce the collection procedures contained in such rules and regulations.



**Section 5.14 No Free Service.** The Municipality will not permit any part of the System or any facility thereof to be used or taken advantage of free of charge by any corporation, firm or person, charitable organization, or by any public agency (including the State of Idaho and any municipality, county, public agency, political subdivision, public corporation or agency or any subsidiary thereof), unless otherwise required by law or existing written agreements.

**Section 5.15 Payment of Claims.** The Municipality will pay and discharge any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the System or upon the System Net Revenues or any part thereof, or upon any funds held by the Trustee, or which might impair the security of the Repayment Installments; *provided*, that nothing herein contained shall require the Municipality to make any such payments so long as the Municipality in good faith shall contest the validity of any such claims and such nonpayment will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

**Section 5.16 Books of Record and Accounts; Financial Statements.** The Municipality will keep proper books of record and accounts in which complete and correct entries shall be made of all transactions relating to the System and the Income Fund, and upon request will provide information concerning such books of record and accounts to the Trustee.

The Municipality will prepare annually, not later than one hundred eighty (180) days after the close of each Fiscal Year, so long as any Repayment Installments remain unpaid, an audited financial statement of the Municipality relating to the Income Fund and all other accounts or funds established pursuant hereto for the preceding Fiscal Year prepared by an Independent Certified Public Accountant, showing the balances in each such account or fund as of the beginning of such Fiscal Year and all deposits in and withdrawals from each such account or fund during such Fiscal Year and the balances in each such account or fund as of the end of such Fiscal Year, which audited financial statement shall include a statement as to the manner and extent to which the Municipality has complied with the provisions hereof. Failure to furnish said audited financial statements within said time may subject the Municipality to late charges by the Authority. The Municipality will furnish a copy of such audited financial statement to the Trustee upon request, and will furnish such reasonable number of copies thereof to investment bankers, security dealers and others interested in the Bonds.

**Section 5.17 Payment of Taxes and Other Charges and Compliance With Governmental Regulations.** The Municipality will pay and discharge all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the System or any properties owned by the Municipality, or upon the System Revenues, when the same shall become due; *provided*, that nothing herein contained shall require the Municipality to make any such payments so long as the Municipality in good faith shall contest the validity of any such taxes, service charges, assessments or other governmental charges and such nonpayment will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

The Municipality will duly comply with all applicable State, federal and local statutes and all valid regulations and requirements of any governmental authority relative to the operation

of the System or any part thereof, but the Municipality shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith and such noncompliance will not materially adversely affect the Municipality's ability to perform its obligations hereunder.

**Section 5.18 Maintenance of Insurance.** The Municipality agrees to maintain fire and extended coverage insurance on the System in such minimum amounts as are reasonable and prevalent for similar municipalities and systems in the State of Idaho and worker's compensation coverage on all full-time employees working on, in, near or about the System in accordance with applicable State laws. The Municipality may self-insure against such risks. The Municipality shall provide evidence of such insurance to the Authority or the Trustee, respectively, upon written request of either the Authority or the Trustee.

**Section 5.19 Delivery of Closing Documents.** The Municipality agrees to execute and deliver on the Closing Date the certificates attached hereto as Exhibit C.

**Section 5.20 Authority Fees.** The Municipality is paying to the Authority an Application Fee of \$500.00 which may be credited against the Authority Fee. The Municipality shall pay to the Authority the Authority Fee at the closing of the Loan and Annual Expense Charges each year.

## ARTICLE VI - EVENTS OF DEFAULT AND REMEDIES

**Section 6.1 Events of Default.** Any one of the following which occurs and continues shall constitute an Event of Default pursuant to this Loan Agreement:

- (a) failure by the Municipality to transmit to the Trustee any Repayment Installment by the 15th day prior to the respective Repayment Installment Date; or
- (b) failure of the Municipality to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Loan Agreement, other than making the payments referred to in (a) above, which continues for a period of sixty (60) days after written notice, which notice shall specify such failure and request that it be remedied, given to the Municipality by the Authority or the Trustee, unless the Authority and the Trustee (at the direction of the Authority) shall agree in writing to an extension of such time; provided, however, that if the failure stated in the notice cannot be corrected within such period, the Authority and the Trustee (at the direction of the Authority) will not unreasonably withhold their consent to an extension of such time if corrective action is instituted within such period and diligently pursued until the default is corrected.

The provisions of subsection (b) of this Section are subject to the limitation that the Municipality shall not be deemed in default if and so long as the Municipality is unable to carry out its agreements hereunder by reason of strikes, lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State of Idaho or any of their departments, agencies, or officials, or any civil or military authority;

insurrections, riots, epidemics, landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Municipality; it being agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Municipality, and the Municipality shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the Municipality, unfavorable to the Municipality. This limitation shall not apply to any default under subsection (a) of this Section.

**Section 6.2 Remedies On Default.** Whenever any Event of Default shall have occurred and shall continue, the following remedies may be pursued with respect to the Trustee, subject to its rights and protections under the Trust Agreement:

(a) The Trustee shall have access to and the right to inspect, examine and make copies of the books and records and any and all accounts and data of the Municipality.

(b) The Authority or the Trustee may take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Municipality under this Loan Agreement including without limitation taking the actions under Section 3.6 hereof.

In case the Trustee or the Authority shall have proceeded to enforce its rights under this Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Authority, then, and in every such case, the Municipality, the Trustee and the Authority shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Municipality, the Trustee and the Authority shall continue as though no such action had been taken (provided, however, that any settlement of such proceedings duly entered into by the Authority, the Trustee or the Municipality shall not be disturbed by reason of this provision).

In case the Municipality shall fail forthwith to pay amounts due by reason of this Section 6.2 upon demand of the Trustee, the Trustee shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Municipality and collect in the manner provided by law the moneys adjudged or decreed to be payable.

In case proceedings shall be pending for the bankruptcy or for the reorganization of the Municipality under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Municipality or in the case of any other similar judicial proceedings relative to the Municipality, or the creditors or property of the Municipality, then the Trustee shall be entitled and empowered, by intervention in such

proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Loan Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Municipality, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Trust Agreement after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

**Section 6.3 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Municipality should default under any of the provisions of this Loan Agreement and the Authority or the Trustee should employ attorneys or incur other expenses for the collection of the payments due under this Loan Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the Municipality herein contained, the Municipality agrees to pay to the Authority or the Trustee the reasonable fees and expenses of such attorneys and such other expenses so incurred by the Authority or the Trustee.

**Section 6.4 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given the Authority hereunder shall also extend to the Trustee, and the Trustee and the holders of the Bonds shall be deemed third party beneficiaries of all covenants and agreements herein contained.

**Section 6.5 No Additional Waiver Implied by One Waiver.** In the event any agreement or covenant contained in this Loan Agreement should be breached by the Municipality and thereafter waived by the Authority or the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 6.6 No Cross Default.** The Municipality shall not be liable for the failure of any other municipality to make payments with respect to the Bonds. The occurrence of any Event of Default of any other municipality under such municipality's loan agreement shall not constitute an Event of Default of the Municipality under this Loan Agreement.

## ARTICLE VII - PREPAYMENT

**Section 7.1 Redemption of Bonds with Prepayment Moneys.** By virtue of the assignment of certain of the rights of the Authority under this Loan Agreement to the Trustee as is provided in Section 3.4 hereof, the Municipality agrees to and shall pay directly to the Trustee any amount permitted or required to be paid by it under this Article VII. The Trustee shall use the moneys so paid to it by the Municipality to effect redemption of the Bonds as set forth in this Article on the date specified for such redemption. The principal component of the Repayment Installments to be prepaid shall correspond in amount and maturity date to the Bonds related to this Loan Agreement.

**Section 7.2 Option to Prepay Installments.** The Repayment Installments specified in Schedule 1 attached hereto are subject to prepayment at the option of the Municipality on the dates and in the amounts as set forth in Schedule 1 which shall be consistent with the terms for redemption of the Authority Bonds.

**Section 7.3 Amount of Prepayment.** In the case of a prepayment, of the entire amount due hereunder pursuant to Section 7.2 hereof, the amount to be paid shall be a sum sufficient, together with other funds and (as such sufficiency is evidenced by a verification report of an Independent Certified Public Accountant) the yield on any securities deposited with the Trustee and available for such purpose, to pay all Repayment Installments thereafter due. In any event, any prepayment of Repayment Installments shall include sufficient funds to pay all principal, accrued interest, premium, if any, and other costs related to the redemption of the Authority's Bonds to be redeemed as a result of such prepayment.

**Section 7.4 Notice of Prepayment.** The Municipality shall give sixty days' prior written notice to the Authority and the Trustee specifying the date upon which any prepayment pursuant to this Article VII will be made. The Authority and the Trustee, at the request of the Municipality, shall forthwith take all steps necessary under the applicable provisions of the Trust Agreement (except that the Authority shall not be required to make payment of any money required for such redemption) to effect redemption of the part of the then outstanding Bonds related to this Loan Agreement, as the case may be, on the earliest practicable date thereafter, on or after the proposed prepayment date, on which such redemption may be made under applicable provisions of the Trust Agreement.

Notwithstanding anything to the contrary in this Loan Agreement, each notice contemplated in this Section 7.4 that is given with respect to an optional prepayment pursuant to Section 7.2 hereof may state that it is subject to and conditional upon receipt by the Trustee on or prior to the proposed prepayment date of amounts sufficient to effect such prepayment and, if a notice so states, such notice shall be of no force and effect and the prepayment need not be made and the Repayment Installments will not become due and payable on the proposed prepayment date unless such amounts are so received on or prior to the proposed prepayment date.

## **ARTICLE VIII - DISCHARGE OF OBLIGATIONS**

### **Section 8.1 Discharge and Defeasance of Obligations.**

(a) The Repayment Installments shall be discharged to the extent the Bonds are discharged under the Trust Agreement. The principal components of the Repayment Installments to be discharged shall correspond in amount and maturity date to the Bonds related to this Loan Agreement.

(b) If the Municipality shall pay or cause to be paid or there shall otherwise be paid to the Trustee all of the Repayment Installments at the times and in the manner stipulated herein, and the Municipality shall pay in full all other amounts due hereunder, then all agreements, covenants and other obligations of the Municipality hereunder shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall execute and deliver to the Municipality all such instruments as may be necessary or desirable and prepared by or on behalf of the Municipality to evidence such discharge and satisfaction.

(c) Any Repayment Installments shall prior to the Repayment Installment Date or prepayment date thereof be deemed to have been paid within the meaning of and with the effect expressed in subsection (b) of this Section if (1) in case any of such Repayment Installments are to be prepaid, the Municipality shall have given to the Authority and Trustee in form satisfactory to it irrevocable instructions to provide notice in accordance with this Loan Agreement, (2) there shall have been deposited with the Trustee (A) money in an amount which shall be sufficient and/or (B) Government Securities, the interest on and principal of which when paid will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient, in the opinion of an Independent Certified Public Accountant, to transmit and pay when due the Repayment Installments on and prior to the Repayment Installment Dates or prepayment date thereof, as the case may be, and the prepayment premiums, if any, on such Repayment Installments, and (3) an Opinion of Counsel to the effect that such treatment will not adversely affect the tax-exempt status of interest on any Bonds hereunder, provided that this Agreement shall not be discharged and satisfied until all Repayment Installments have been paid or are deemed to have been paid as provided above.

## **ARTICLE IX - NON-LIABILITY OF AUTHORITY; EXPENSES; INDEMNIFICATION**

**Section 9.1 Non-Liability of Authority.** The Authority shall not be obligated to pay the principal of, or premium, if any, or interest on the Bonds, or to discharge any other financial liability (including but not limited to financial liability under Section 5.7 hereof) in connection herewith, except from, and to the extent of, payments made by the Municipality under this Loan Agreement, or through the State intercept provided under Section 3.6 of this Loan Agreement and Section 67-8727, Idaho Code, as amended. The Municipality hereby acknowledges that the Authority's sole source of moneys to repay the Bonds will be provided by the payments made by

the Municipality pursuant to this Loan Agreement (excluding payments to the Authority or the Trustee pursuant to Section 5.7 and 9.3 of this Loan Agreement) and payments from other participating Municipalities and the State intercept provided under Section 67-8727, Idaho Code, as amended.

**Section 9.2 Liability of Municipality Limited to System Revenues and Other Funds.** The Municipality shall not be required to advance any moneys derived from any source of income other than the System Revenues, the Income Fund and the other funds provided herein for the payment of the Repayment Installments or for the performance of any agreements or covenants required to be performed by it contained herein. The Municipality may, however, advance moneys for any such purpose so long as such moneys are derived from a source legally available for such purpose and may be legally used by the Municipality for such purpose.

The obligation of the Municipality to make the Repayment Installments is a special obligation of the Municipality payable solely from the System Net Revenues and the other legally available funds provided for herein (except as provided in Section 3.6 or elsewhere herein), and does not constitute a debt of the Municipality or of the State of Idaho or of any political subdivision thereof in contravention of any constitutional or statutory debt limitation or restriction.

**Section 9.3 Indemnification.** The Municipality releases the Authority and the Trustee from, and covenants and agrees that neither the Authority nor the Trustee shall be liable for, and covenants and agrees, to the extent permitted by law, to indemnify, defend and hold harmless the Authority and the Trustee and their officers, directors, elected officials, employees and agents from and against, any and all losses, claims, damages, liabilities or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with the financing or refinancing of the Project, or the conditions, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation or construction of the Project or any part thereof.

## ARTICLE X - MISCELLANEOUS

**Section 10.1 Notices.** All notices, certificates or other communications shall be deemed sufficiently given on the second day following the day on which the same have been mailed by first class mail, postage prepaid, addressed to the Authority, the Municipality or the Trustee, as the case may be. Notices for the Municipality shall be sent to the address specified in Schedule 1 attached hereto. Notices for the Authority and the Trustee shall be sent to the addresses set forth in the Trust Agreement. A duplicate copy of each notice, certificate or other communication given hereunder by either the Authority or the Municipality to the other shall also be given to the Trustee. The Authority, the Municipality and the Trustee may, by notice given hereunder, designate any different addresses to which subsequent notices, certificates or other communications shall be sent.

**Section 10.2 Severability.** If any provision of this Loan Agreement shall be held or deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other

provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 10.3 Execution of Counterparts.** This Loan 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.

**Section 10.4 Amendments, Changes and Modifications.** Subsequent to the initial issuance of Bonds and prior to their payment in full, or provision for such payment having been made as provided in the Trust Agreement, this Loan Agreement may be amended, changed or modified as set forth in Article X of the Trust Agreement.

**Section 10.5 Governing Law.** This Loan Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Idaho.

**Section 10.6 Authorized Municipality Representative.** Whenever under the provisions of this Loan Agreement the approval of the Municipality is required or the Authority or the Trustee is required to take some action at the request of the Municipality, such approval or such request shall be given on behalf of the Municipality by an Authorized Municipality Representative, and the Authority and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

**Section 10.7 Term of the Loan Agreement.** This Loan Agreement shall be in full force and effect from the date hereof and shall continue in effect as long as the Municipal Bond is outstanding; provided, however, that the rights of the Trustee and the Authority under Section 9.3 hereof shall survive the termination of this Loan Agreement, the retirement of the Bonds and the removal or resignation of the Trustee. All representations and certifications by the Municipality as to all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Loan Agreement.

**Section 10.8 Binding Effect.** This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority, the Municipality, the Trustee and their respective successors and assigns.

**Section 10.9. Post Issuance Tax Compliance Procedures of the Authority.** The parties hereto both acknowledge the Post Issuance Tax Compliance Procedures of the Authority attached hereto as Exhibit F and agree that they will follow and comply with said procedures.



IN WITNESS WHEREOF, the City of Coeur D'Alene, Idaho has caused this Loan Agreement to be executed in its name and its seal, if any, to be hereunto affixed by its duly authorized officers, and the Idaho Bond Bank Authority has caused this Loan Agreement to be executed in its name and attested by its duly authorized officers, all as of the date first above written.

**CITY OF COEUR D'ALENE, IDAHO**

By \_\_\_\_\_  
Sandi Bloem, Mayor

Attest:

\_\_\_\_\_  
Susan Weathers, City Clerk

**IDAHO BOND BANK AUTHORITY**

By \_\_\_\_\_  
Executive Director

**SCHEDULE 1: CITY OF COEUR D'ALENE, IDAHO**

Prior Note Date:	_____ 1, 2007
Prior Note Original Par Amount:	Department of Environmental Quality Note, Series 2007 (\$_____).
Municipal Bond Purchase Price:	Par amount of \$_____ plus a premium of \$_____ less Underwriter Discount of \$_____, for a net purchase price of \$_____.
Repayment Amount:	\$_____ plus interest.
Prior Obligations:	Prior Note (to be refunded).
Prepayment Provisions:	The Repayment Installments coming due on or prior to September 15, 2022, are not subject to prepayment. The Repayment Installments coming due on and after September 15, 2023, are subject to prepayment, at the written direction of the Municipality and with the consent of the Authority, from any moneys deposited with the Trustee, as a whole or in part on any date on or after September 15, 2022, among such payment dates as designated by the Authority to the Trustee, at the price of par, plus accrued interest, if any, to the date of prepayment.
Municipality address:	710 E. Mullan Avenue Coeur D'Alene, ID 83814
Disbursement of Loan:	<ol style="list-style-type: none"> <li>1. \$_____ from the proceeds of the Municipal Bond to pay off the Prior Note.</li> <li>2. \$_____ to the Series 2012D Cost of Issuance Account held by the Trustee under the Trust Agreement to pay various costs of issuance on the Series 2012D Bonds.</li> <li>3. \$_____ representing the Authority Fee shall be paid to the Authority from the Series 2012D Cost of Issuance Account.</li> <li>4. \$_____ to the Municipality for costs of issuance.</li> <li>5. To the Municipality \$_____ as a rounding amount.</li> </ol>
Reserve Fund:	Municipality to transfer \$_____ of funds held by the Municipality to fund the Reserve Fund.
Parity Obligations:	The Municipality's obligations under (i) the Sewer Revenue Refunding Bond, Series 2004, issued December 1, 2004, to the Authority to refinance certain improvements to the System; and (ii) State of Idaho Department of Environmental Quality Loan Offer, Acceptance and Agreement for Wastewater Treatment Facility Design and Construction dated December 22, 2009, pursuant to which \$12,149,284 was loaned to the Municipality and which a bond in such amount is expected to be issued in 2013.

EXHIBIT A

**Description of the Project**

Project

The Project consists of the issuance of the Municipality's Sewer Revenue Refunding Bond, Series 2012, in the principal amount of \$\_\_\_\_\_, for the purpose of refunding the Municipality's outstanding Prior Note which originally financed all or a portion of the costs of design and construction of various improvements, for the sewer system of the City of Coeur D'Alene, Idaho.

**EXHIBIT B**

**Repayment Installments and Repayment Installment Dates**

<b>DATE**</b>	<b>PRINCIPAL</b>	<b>COUPON</b>	<b>INTEREST</b>	<b>DEBT SERVICE</b>
		(to come)		

Note: \*\* Payments must be transmitted to the Trustee 15 days prior to the payment dates listed.

EXHIBIT C

**Municipality Closing Documents**

- a. Bond Ordinance authorizing the Municipal Bond, and execution of the Loan Agreement.
- b. Loan Agreement, dated as of December 1, 2012 between the Municipality and the Authority.
- c. Bond of the Municipality.
- d. Loan Application.
- e. Opinion of Bond Counsel.
- f. Tax Certificate of Municipality.
- g. General Certificate.
- h. Signature and No Litigation Certificate.
- i. Receipt for Bond.
- j. IRS Form 8038-G.
- k. Receipt for Proceeds of Bond.
- l. Cash Flows

EXHIBIT D1

**Certificate Regarding Annual Financial Information**

The undersigned on behalf of the City of Coeur D’Alene, Idaho (the “Municipality”) hereby certifies in connection with the Loan Agreement dated as of December 1, 2012 between the Municipality and the Idaho Bond Bank Authority (the “Authority”) that:

1. The attached financial statements are the true and correct audited financial statements of the Municipality for the Municipality’s fiscal year ended September 30, \_\_\_\_ (the “Prior Fiscal Year”).
2. Unless already stated in the attached financial statements, the debt, and the amount of debt, outstanding against the sewer system of the Municipality (including any debt to the Authority), as of the end of the Prior Fiscal Year, is as follows:

\_\_\_\_\_.  
(Attach separate sheet if needed)

3. Except as stated below or on a separate attached sheet, there is not now, and has not been during the Prior Fiscal Year: (1) any default on the Loan Agreement or other debt of the Municipality; (2) any litigation filed against the Municipality challenging the validity of the Loan Agreement; (3) any citations of non-compliance by any regulatory authority with respect to the System; or (4) failure to comply with the System rates and charges requirement of Section 5.11 of the Loan Agreement, taking into account any transfers from the Rate Stabilization Account:

\_\_\_\_\_.  
(Attach separate sheet if needed)

4. There are, and have been during the Prior Fiscal Year, no material “Listed Events,” as referenced in Section 5.9(d) of the Loan Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF COEUR D’ALENE, IDAHO

By \_\_\_\_\_  
Its: \_\_\_\_\_  
(Treasurer or Finance Director)

EXHIBIT D2

**Notice to Repository of Failure to File Annual Report**

Name of Municipality:       City of Coeur D'Alene, Idaho  
Name of Bond Issue:        Idaho Bond Bank Authority Revenue Bonds, Series 2012D  
Date of Issuance:         December 20, 2012

NOTICE IS HEREBY GIVEN that the City of Coeur D'Alene, Idaho has not provided an Annual Report with respect to the above-named Bonds as required by Section 5.9 of the Loan Agreement dated as of December 1, 2012, between the Municipality and the Idaho Bond Bank Authority. [The Municipality anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

\_\_\_\_\_  
On behalf of the City of Coeur D'Alene,  
Idaho

cc:     City of Coeur D'Alene, Idaho

EXHIBIT E

**Fees charged by Authority for failure to comply with  
Continuing Disclosure Requirements**

Continuing Disclosure Late Fee Scale

Due date – 3 months after:	Lesser of \$7,500 or 0.50% of issued amount
3 – 6 months after due date:	Lesser of \$500 or 0.20% of issued amount
6 months – 9 months after due date:	Lesser of \$500 or 0.20% of issued amount
9 months – 1 year after due date:	Lesser of \$500 or 0.20% of issued amount
Every 3 months after 1 year:	Lesser of \$500 or 0.20% of issued amount

This scale will pertain to every outstanding borrowing of the Municipality from the Idaho Bond Bank Authority.



EXHIBIT F

**Post Issuance Tax Compliance Procedures**  
(attached)

**Idaho Bond Bank Authority**  
**Post-Issuance Tax Compliance Procedures**  
**For Tax-Exempt Bonds**

February 13, 2012

The purpose of these Post-Issuance Tax Compliance Procedures is to establish policies and procedures in connection with tax-exempt bonds ("Bonds") issued by the Idaho Bond Bank Authority (the "Authority") so as to ensure that the Authority complies with all applicable post-issuance requirements of federal income tax law needed to preserve the tax-exempt status of the Bonds. The Authority reserves the right to use its discretion as necessary and appropriate to make exceptions or request additional provisions as circumstances warrant. The Authority also reserves the right to change these policies and procedures from time to time.

#### General

Inasmuch as the Authority is a responsible conduit issuer authorizing the issuance of Bonds for eligible borrowers (each, a "Borrower"), the Authority now identifies post-issuance tax compliance procedures for all Bonds issued by the Authority for Borrowers, as well as the Authority's expectations of and requirements for all Borrowers concerning these procedures. For tax-exempt bonds issued by the Authority, each loan ("Loan") to each Borrower will be a tax-exempt obligation, as evidenced by an unqualified opinion of bond counsel to each Borrower. Ultimate responsibility for all matters relating to Authority financings and refinancings rests with the Authority Executive Director (the "Executive Director"). Ultimate responsibility for all matters relating to Loans rests with the corresponding officer at each Borrower.

#### Post-Issuance Compliance Requirements

##### External Advisors Documentation

The Executive Director and other appropriate Authority personnel and the corresponding personnel of each Borrower shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the Bond issuance process to identify requirements and to establish procedures necessary or appropriate so that the Bonds will continue to qualify for the appropriate tax status. Those requirements and procedures shall be documented in Authority and Borrower resolutions, Tax Certificates and / or other documents finalized at or before issuance of the Bonds. Those requirements and procedures shall include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases beyond) the term of the Bonds or the Loan, as appropriate.

The Executive Director and other appropriate Authority personnel and the corresponding personnel of each Borrower also shall consult with bond counsel and other legal counsel and advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements in fact are met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond- financed assets.

Whenever necessary or appropriate, the Authority shall engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds.

#### Role of the Authority as Bond Issuer

Unless otherwise provided by Authority resolutions, unexpended Bond proceeds shall be held by the Authority, and the investment of Bond proceeds shall be managed by the Executive Director. The Executive Director shall maintain records regarding the investments and transactions involving Bond proceeds held by the Authority or the Trustee for the bonds. Funds transferred to the Borrower shall constitute expending Bond proceeds for the purposes of the Authority. Any investment of funds by the Borrower or Borrower's Trustee is the responsibility of the Borrower. As such, all record retention and other responsibilities associated with Borrower proceeds is the sole responsibility of the Borrower.

If an Authority resolution provides for Bond proceeds to be administered by a trustee, the trustee shall provide regular, periodic (monthly) statements regarding the investments and transactions involving Bond proceeds.

#### Arbitrage Rebate and Yield

The Authority will loan out all proceeds to underlying Borrowers at issue. As such, the requirement for arbitrage rebate and yield calculations will not be applicable.

The Authority will consult annually with bond counsel and tax counsel to confirm the applicability of arbitrage rebate and yield calculations. If at any time it is determined that these requirements are applicable, the Authority shall do the following:

- the Authority shall engage the services of a Rebate Service Provider, and the Authority or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis;
- upon request, the Executive Director and other appropriate Authority personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider;

- the Executive Director and other appropriate Authority personnel shall monitor efforts of the Rebate Service Provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed; and
- during the construction period of each capital project financed in whole or in part by Bonds, the Executive Director and other appropriate Authority personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months or 24 months, as applicable, following the issue date of the Bonds.

For working capital financings, if any, the Authority shall follow procedures set forth in the applicable Tax Certificate and/or instructions delivered at bond or note closing.

The Authority shall retain copies of all arbitrage reports and trustee statements as described below under "Record Keeping Requirements".

#### Use of Bond Proceeds

Except for the obligation of the Authority to maintain records regarding the Loans made for Bond proceeds, it is the Authority's policy that the Borrower shall be responsible for:

- monitoring the use of Loan proceeds and the use of Loan-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Loan-financed assets throughout the term of the Loan (and in some cases beyond the term of the Loan) to ensure compliance with covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- maintaining records identifying the Loan and the assets or portion of assets that are financed or refinanced with proceeds of each Loan;
- consulting with Bond Counsel and other professional expert advisers in the review of the Loan and any contracts or arrangements involving use of Loan-financed facilities to ensure compliance with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- maintaining records regarding the Loan and for any contracts or arrangements involving the use of Loan-financed facilities as might be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates;
- meeting or conferring at least annually with personnel responsible for the Loans and Loan-financed assets to identify and discuss any existing or planned use of Loan-financed,

assets or output or throughput of Loan-financed assets, to ensure that the Loan and those uses are consistent with all covenants and restrictions set forth in applicable Authority and Borrower resolutions and Tax Certificates.

- taking timely remedial actions under section 1.141-12 of the Treasury Regulations (or other remedial actions authorized by the Commissioner of the IRS under Section 1.141-12(h) of the Regulations) to prevent from being considered "deliberate actions" any actions of the Borrower which cause the conditions of the private business tests or the private loan financing test to be met resulting in the Loan becoming a private activity bond.

All relevant records and contracts shall be maintained as described below and in the applicable Tax Certificate. The Borrower, in the Tax Certificate relating to the Loan and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for the tasks listed above.

#### Investment of Bond Proceeds

Investment of bond proceeds maintained by the Authority shall remain in compliance with the arbitrage bond rules and rebate of arbitrage as supervised by the Executive Director.

- Guaranteed investment contracts ("GIC") will be purchased only using the three-bid "safe harbor" of applicable Treasury regulations, in compliance with fee limitations on GIC brokers in the regulations.
- Other investments will be purchased only in market transactions.
- Calculations of rebate liability will be performed annually by outside consultants.
- Rebate payments will be made with Form 8038-T no later than 60 days after (a) each fifth anniversary of the date of issuance and (b) the final retirement of the issue. Compliance with rebate requirements will be reported to the bond trustee and the issuer.
- Identify date for first rebate payment at time of issuance. Enter in records for the issue.

The investment of all proceeds received by the Borrower is the responsibility of the Borrower to supervise and maintain compliance with the arbitrage bond rules and rebate of arbitrage.

## Record Keeping Requirements

Unless otherwise specified in applicable Authority resolutions or Tax Certificates, the Authority shall maintain the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- a copy of the Bond closing transcript(s) and other relevant documentation delivered to the Authority at or in connection with closing of the issue of Bonds; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.

Unless otherwise specified in applicable Authority resolutions or Tax Certificates, it is the Authority's policy that the Borrower shall be responsible for maintaining the following documents for the term of each Loan (including refunding obligations, if any) plus at least three years:

- a copy of all material documents relating to capital expenditures financed or refinanced by Loan proceeds, including (without limitation) loan documents for the Authority's pooled loans to municipalities and construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Loan proceeds and records identifying the assets or portion of assets that are financed or refinanced with Loan proceeds;
- a copy of all contracts and arrangements involving private use of Loan-financed assets or for the private use of output or throughput of Loan-financed assets; and
- copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.

The Borrower, in the Tax Certificate relating to the Loan and/or other documents finalized at or before the issuance of the Bonds, shall designate an officer or employee responsible for retaining the records listed above.

RESOLUTION NO. 12-047

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE 2012 EMPLOYEE SEPARATION INCENTIVE - LETTER OF AGREEMENT(s) (LOA).

WHEREAS, in an effort to review and conserve resources that would result in a reduction of Personnel costs for Fiscal year 2012-2013, the City extended a Separation Incentive to employees with a separation date certain and who met required criteria.

WHEREAS, it is deemed to be in the best interest of the City of Coeur d'Alene and the citizens thereof to enter into the 2012 Employee Separation Incentive - Letter of Agreement(s) pursuant to the terms and conditions set forth in each separate LOA, which are attached hereto as Exhibit "1" and by reference made a part hereof; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the City enter into the 2012 Employee Separation Incentive – Letter of Agreement(s), with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said LOA's to the extent the substantive provisions of the Contract remain intact.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk be and they are hereby authorized to execute such LOA's on behalf of the City.

DATED this 4<sup>th</sup> day of December, 2012.

\_\_\_\_\_  
Sandi Bloem, Mayor

ATTEST:

\_\_\_\_\_  
Susan K. Weathers, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

COUNCIL MEMBER KENNEDY Voted \_\_\_\_\_

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER GOODLANDER Voted \_\_\_\_\_

COUNCIL MEMBER ADAMS Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.



INFORMATION SECTION

Including

Correspondence

Board, Commission, Committee Minutes

**CITY OF COEUR D'ALENE**  
**Treasurer's Report of Cash and Investment Transactions**

FUND	BALANCE 9/30/2012	RECEIPTS	DISBURSE- MENTS	BALANCE 10/31/2012
<u>General-Designated</u>	\$489,855	\$2,059	\$44,061	\$447,853
<u>General-Undesignated</u>	6,086,271	4,495,168	4,721,181	5,860,258
<u>Special Revenue:</u>				
Library	151,498	8,593	103,949	56,142
CDBG	(26,715)	65,835	42,651	(3,531)
Cemetery	59,077	19,759	26,726	52,110
Parks Capital Improvements	297,107	58,783	72,595	283,295
Impact Fees	2,467,046	32,877	10,845	2,489,078
Annexation Fees	70,518	12	70,000	530
Insurance	1,340,782	261	37,716	1,303,327
Cemetery P/C	1,847,147	22,880	20,513	1,849,514
Jewett House	3,031	11,331	4,325	10,037
Reforestation	10,186	2,032	280	11,938
Street Trees	162,546	4,529		167,075
Community Canopy	1,257	420	10	1,667
CdA Arts Commission	907			907
Public Art Fund	101,620	18		101,638
Public Art Fund - LCDC	523,117	93	23,944	499,266
Public Art Fund - Maintenance	120,168	22	278	119,912
<u>Debt Service:</u>				
2000, 2002 & 2006 G.O. Bonds	426,332	4,670		431,002
LID Guarantee	88,024	45,120	97,000	36,144
LID 124 Northshire/Queen Anne/Indian Meadows	-			-
LID 127 Fairway / Howard Francis	-			-
LID 129 Septic Tank Abatement	-			-
LID 130 Lakeside / Ramsey / Industrial Park	4	49,000		49,004
LID 146 Northwest Boulevard	-	48,000		48,000
<u>Capital Projects:</u>				
Street Projects	11,075	18,065	418	28,722
<u>Enterprise:</u>				
Street Lights	17,354	137,138	39,783	114,709
Water	4,729	746,848	299,471	452,106
Water Capitalization Fees	2,022,028	49,331		2,071,359
Wastewater	6,451,352	599,459	890,906	6,159,905
Wastewater-Reserved	1,487,791	27,500		1,515,291
WWTP Capitalization Fees	1,512,149	66,802		1,578,951
WW Property Mgmt	60,668			60,668
Sanitation	(209,806)	525,343	523,067	(207,530)
Public Parking	255,131	10,462	112,912	152,681
Stormwater Mgmt	(350,583)	427,446	49,502	27,361
Wastewater Debt Service	-			-
<u>Fiduciary Funds:</u>				
Kootenai County Solid Waste Billing	-	196,748		196,748
LID Advance Payments	194	40		234
Police Retirement	1,427,369	14,786	46,494	1,395,661
Sales Tax	1,444	1,935	1,444	1,935
BID	204,204	4,586		208,790
Homeless Trust Fund	-	476		476
<b>GRAND TOTAL</b>	<b>\$27,114,877</b>	<b>\$7,698,427</b>	<b>\$7,240,071</b>	<b>\$27,573,233</b>

CITY OF COEUR D'ALENE  
 BUDGET STATUS REPORT  
 ONE MONTH ENDED  
 31-Oct-2012

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 10/31/2012	PERCENT EXPENDED
Mayor/Council	Personnel Services	\$207,739	\$16,681	8%
	Services/Supplies	12,275	126	1%
Administration	Personnel Services	330,656	33,562	10%
	Services/Supplies	69,210	13	0%
Finance	Personnel Services	590,947	48,318	8%
	Services/Supplies	85,980	5,735	7%
Municipal Services	Personnel Services	923,631	77,372	8%
	Services/Supplies	437,018	75,967	17%
	Capital Outlay	9,000		
Human Resources	Personnel Services	214,763	18,307	9%
	Services/Supplies	26,900	2,417	9%
Legal	Personnel Services	1,335,864	111,756	8%
	Services/Supplies	93,033	2,499	3%
Planning	Personnel Services	450,912	37,010	8%
	Services/Supplies	24,600		
Building Maintenance	Personnel Services	279,060	23,715	8%
	Services/Supplies	119,359	4,174	3%
	Capital Outlay			
Police	Personnel Services	8,996,923	683,947	8%
	Services/Supplies	830,019	8,832	1%
	Capital Outlay	142,749		
Fire	Personnel Services	7,250,642	553,725	8%
	Services/Supplies	376,787	3,849	1%
	Capital Outlay			
General Government	Services/Supplies	192,635	191,885	100%
	Capital Outlay			
Byrne Grant (Federal)	Personnel Services	53,079	12,182	23%
	Services/Supplies	95,998		
	Capital Outlay			
COPS Grant	Personnel Services	69,819	12,656	18%
	Services/Supplies			
CdA Drug Task Force	Services/Supplies	36,700	134	0%
	Capital Outlay			
Streets	Personnel Services	1,800,904	146,725	8%
	Services/Supplies	589,400	2,050	0%
	Capital Outlay			

CITY OF COEUR D'ALENE  
 BUDGET STATUS REPORT  
 ONE MONTH ENDED  
 31-Oct-2012

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 10/31/2012	PERCENT EXPENDED
ADA Sidewalk Abatement	Personnel Services	182,335	12,624	7%
	Services/Supplies	38,450	258	1%
Engineering Services	Personnel Services	508,936	42,450	8%
	Services/Supplies	729,500	11,566	2%
	Capital Outlay			
Parks	Personnel Services	1,257,438	100,066	8%
	Services/Supplies	408,450	(1,385)	0%
	Capital Outlay			
Recreation	Personnel Services	625,654	40,635	6%
	Services/Supplies	138,800	(1,013)	-1%
Building Inspection	Personnel Services	697,044	59,745	9%
	Services/Supplies	24,395	181	1%
Total General Fund		30,257,604	2,338,764	8%
Library	Personnel Services	1,004,510	79,270	8%
	Services/Supplies	182,450	35	0%
	Capital Outlay	92,000	786	1%
CDBG	Services/Supplies	267,325		
Cemetery	Personnel Services	137,465	11,240	8%
	Services/Supplies	86,835	6,886	8%
	Capital Outlay	15,000		
Impact Fees	Services/Supplies	613,133		
Annexation Fees	Services/Supplies	70,000	70,000	100%
Parks Capital Improvements	Capital Outlay	881,215	63,494	7%
Insurance	Services/Supplies	264,000	28,957	11%
Cemetery Perpetual Care	Services/Supplies	98,000	8,111	8%
Jewett House	Services/Supplies	42,000	3,310	8%
Reforestation	Services/Supplies	1,500		
Street Trees	Services/Supplies	65,000		
Community Canopy	Services/Supplies	1,500	10	1%
CdA Arts Commission	Services/Supplies	7,000		
Public Art Fund	Services/Supplies	245,000	12,557	5%
Total Special Revenue		4,073,933	284,656	7%
Debt Service Fund		1,381,865	97,000	7%

CITY OF COEUR D'ALENE  
 BUDGET STATUS REPORT  
 ONE MONTH ENDED  
 31-Oct-2012

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 10/31/2012	PERCENT EXPENDED
Govt Way - Dalton to Hanley	Capital Outlay			
Govt Way - Hanley to Prairie	Capital Outlay	420,000		
Levee Certification	Capital Outlay	250,000		
15th Street - Lunceford to Dalton	Capital Outlay			
15th Street - Harrison to Best	Capital Outlay			
3rd / Harrison signal	Capital Outlay	100,000		
Kathleen Avenue Widening	Capital Outlay			
Total Capital Projects Funds		770,000		
Street Lights	Services/Supplies	570,050	2,819	0%
Water	Personnel Services	1,569,132	119,681	8%
	Services/Supplies	4,167,607	13,311	0%
	Capital Outlay	1,865,550	1,995	0%
Water Capitalization Fees	Services/Supplies	850,000		
Wastewater	Personnel Services	2,231,295	179,328	8%
	Services/Supplies	6,247,788	27,510	0%
	Capital Outlay	8,384,600	531	0%
	Debt Service	2,133,241		
WW Capitalization	Services/Supplies	879,336		
Sanitation	Services/Supplies	3,285,480	291,794	9%
Public Parking	Services/Supplies	190,957	3,500	2%
	Capital Outlay	385,000		
Stormwater Mgmt	Personnel Services	97,846	7,939	8%
	Services/Supplies	526,121	2,670	1%
	Capital Outlay	300,000		
Total Enterprise Funds		33,684,003	651,078	2%
Kootenai County Solid Waste		2,200,000		
Police Retirement		176,000	14,619	8%
Business Improvement District		156,000		
Homeless Trust Fund		6,100		
Total Fiduciary Funds		2,538,100	14,619	1%
TOTALS:		\$72,705,505	\$3,386,117	5%