

# Coeur d'Alene

## CITY COUNCIL MEETING

*June 4, 2013*

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**MEMBERS OF THE CITY COUNCIL:**

**Sandi Bloem, Mayor**

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

# CONSENT CALENDAR

A CONTINUED MEETING  
OF THE COEUR D'ALENE CITY COUNCIL  
HELD ON MAY 20, 2013  
IN THE LIBRARY COMMUNITY ROOM,  
701 E. FRONT AVENUE

The Coeur d'Alene City Council met in a continued session on May 20, 2013 at 12:00 Noon at the Library Community Room, there being present upon roll call a quorum of the Council.

Sandi Bloem, Mayor

Steve Adams ) Members of Council Present  
Dan Gookin )  
Loren "Ron" Edinger )  
Woody McEvers )  
Deanna Goodlander )  
Mike Kennedy ) (arrived at 12:05)

STAFF PRESENT: Wendy Gabriel, City Administrator; Doug Eastwood, Parks Director; Tim Martin, Street Superintendent; Mike Gridley, City Attorney; Gordon Dobler, City Engineer; Jon Ingalls, Deputy City Administrator; Wayne Longo, Police Chief, Steve Childers, Police Captain; Troy Tymesen, Finance Director; Michael Kempton, Parks Department; Tami Stroud, Associate Planner, Bill Greenwood, Assistant Parks Superintendent, Monte McCully, Trails Coordinator, Sid Fredrickson, Wastewater Superintendent, Jim Markley, Water Superintendent and Renata McLeod, City Clerk.

**WORKSHOP - TRANSFER OF PROPERTY ALONG COEUR D'ALENE LAKE DRIVE FROM ITD:** The Mayor welcomed the audience and stated the purpose of the meeting was to discuss the option of a property transfer from the Idaho Transportation Department (ITD) of Coeur d'Alene Lake Drive. She explained that this meeting was a workshop that is intended to allow Council and staff discussions; therefore, there will be no public comment period.

City Administrator Wendy Gabriel stated that Jim Coleman, the Vice Chair of the Idaho Transportation Board and various other state department representatives were present and available to answer question throughout the workshop. She provided an outline of the topics to be discussed to include the following: the draft agreement and negotiable terms; property interest to be acquired; jurisdictional issues; annexation and the area of city impact (relative to the road only); city utilities; private dock access; risks (slide area and bridge maintenance); potential partnerships; maintenance costs; public access; hydroplane races; advantages/disadvantages; and questions and discussion.

Ms. Gabriel stated that prior discussions of the draft Maintenance Agreement centered around a possible endowment of part of all of the \$3 million, to be provided by ITD. ITD does not have restrictions for the funds; therefore, an endowment would be allowable. ITD has agreed to remove the bridge and maintain the bridge until the point in time they remove the bridge. ITD will maintain and monitor the equipment that is sunk into the lake. Idaho Parks and Recreation

(IDPR) will continue to maintain the parkway; however, the City would enter into its own agreement with IDPR. Maintenance of signal at 23<sup>rd</sup> street should be included in the agreement. ITD will be responsible for some of the risk of a slide, currently referred to as a catastrophic event that closes one or more lanes of travel. The assumption is that emergency relief funding would be included in such an event. Another option is to change the catastrophic language to state that ITD would be responsible for any slide that closes a lane of traffic at any time.

Ms. Gabriel discussed the property interest along the roadway and stated that some property is owned in fee and some property is held through a perpetual easement. She clarified the jurisdictional issues by stating that just because the land is acquired by the City it does not mean it is regulated by City codes. The land would not be within the city limits, so the City would not have jurisdiction over fire, EMS, or police; however there are mutual aid agreements for emergencies. Staff would recommend annexation of the roadway and in fee property so that city laws can be upheld in those areas.

Councilman Gookin asked for clarification as to how this 5-mile street does not equal a shoestring annexation. City Attorney Mike Gridley stated that a shoestring annexation would be an annexation of a piece of land (the shoestring) to get to another parcel that does not directly abut the City. Councilman Edinger asked for clarification of what staff is recommending the City annex. Ms. Gabriel stated that it would be the entire corridor, the roadway, the property the trail is on, and the property to the water. Councilman Edinger asked if the annexation would be done prior to the proposed hydroplane races this year. Ms. Gabriel stated that if ITD accepts the terms of the agreement, the agreement would be effective after Labor Day weekend to avoid the issues with races. Councilman McEvers clarified that if the City annexes the properties, the City rules would apply, if the City accepts the land (without annexing) the County rules apply. Ms. Gabriel stated that the advantage to annexing is that the rules are what the Council would want to apply, as any issues would come before the Council. Mr. Gridley stated that one argument for local control is that the state currently has a lot of jurisdiction over this land and they are far removed, the County is the next level and they are a little removed, but the City would give local control over issue such as parking along the roadway.

Councilman Adams stated that he has spoken with a property owner regarding easements, how that would be affected by the City annexing. Mr. Gridley stated that the City would take whatever the state gives the City. If there were an existing agreement between the property owner and the state, the City would inherit that and could not change that agreement. There could be issues with encroachment permits crossing the trail area, as ITD issues those currently. There are different types of ownership with different rights. Councilman Gookin asked if there were any known issues with easements along the road with existing property owners. Mr. Coleman stated this has been an issue for ITD for many years. Approximately 2 years ago, a case went to Idaho Supreme Court then legislation was passed that does not allow the right-of-way to inhibit riparian upland rights. Lakefront rights cannot be prohibited. Mr. Coleman stated that it is easier to deal with the City regarding encroachment than the state, as the state is bound by rules and regulations in Idaho code that are necessary applicable to a local jurisdiction. Additionally, disposal of property and granting of encroachments are very encumbered at the state level, but the City can hold a hearing and abandon right-of-way. Due to the fact that this road is primarily local road, it is the policy and desire of the Transportation Board to get the

property under local control. This is a process they are doing throughout the state. Councilman Edinger stated that East Side Highway District (Eastside) has connecting roads to Coeur d'Alene Lake Drive, and wondered why ITD did not make the proposal to Eastside. Mr. Coleman stated that many years ago, there was an offer to Eastside, negotiations went on for a lengthy period of time and they could not come to a conclusion. Mr. Coleman clarified that he does not know the terms discussed; however, it is ITD's method to provide some funding within the transfers but he does not know the amount. Councilman Kennedy asked how any potential state surplus would affect ITD and the ability for the City to ask for more money. Mr. Coleman stated that ITD does not get any money from the state General Fund, so any surplus would not be provided to ITD. ITD is funded through gas tax and car registration and each year revenue has gone down.

Ms. Gabriel presented the current area of city impact map and clarified that staff will be recommending an adjustment to the area of city impact to exclude some areas around the roadway, that are not expected to ever be provided City services. The fear expressed previously that this is an annexation land grab would be minimized, as that area concern would no longer be within the area of city impact, if adjusted per staff recommendations. Availability of City utilities is another reason that the City would not annex these areas, as it would be very expensive to run utilities to those areas since the City utilities stop at the beach house. Hillside properties would require lift stations and it would be very costly for a developer to pull utilities any further. Private dock access is another area of concern noted, as stated previously there is nothing the City could do, or want to do to prevent access. The City could create vehicle pull off areas to create safe corridors for access to the waterfront for loading and unloading.

Ms. Gabriel noted the risks include the bridge and believes the risk can be mitigated through the agreement. The slide area is another noted risk that can be mitigated through ITD stepping in if a catastrophic slide occurs. She noted that partnership with other agencies would occur. She noted that one reason ITD brought this option to the City is that in one exchange, to one entity, that is in the business of maintaining parks and roadways. The City does bring in other entities to help in their endeavors. As an example, IDPR is willing to continue maintenance of the parkway; if they ever decide otherwise the City have the capability to do so. Plowing can be partnered with Eastside, as they can plow areas that are convenient to us, and Eastside could plow areas convenient to them (such as Lake Coeur d'Alene Drive). Councilman Edinger asked how much it costs IDPR to maintain the Centennial Trail and restrooms. Ms. Gabriel stated that she was not sure, but the City projection is about \$15,000. The City would include keeping the trail open year round, including plowing the trail during the winter, and IDPR does not plow in winter.

Ms. Gabriel stated that the Agreement states that the City would be responsible for routine maintenance such as plowing, overlay, and ditch work. The City Engineer will present information regarding when an overlay is due. The road was built to highway standards, not City standards, so it will hold overlay longer than a city street, which is currently estimated to be 5-10 years. Mr. Martin provided some of the history regarding how the City snow plan is implemented. During a snow event, the Street Department begins by aggressively plowing arterials, then hills and downtown. They use all operators and mechanics during a snow event. They have no history of plowing Lake Coeur d'Alene Drive, so they can only estimate what it would take. They would look to partners at Eastside to help him. Currently it takes

approximately 6.5 hours to plow all City arterials. He would plan to pick up Lake Coeur d'Alene Drive at the tail end of the atrial plow utilizing dump trucks. ITD vehicles are newer, computerized, and larger (approximately \$250,000 to \$350,000) and they utilized depreciation of those vehicles in estimating their costs. The City utilizes vehicles longer and they depreciate longer; therefore, City costs are estimated lower. Additionally, he clarified that he estimates costs based on the number of times an area is plowed and then divides costs accordingly. Costs include deicer, sand, and overtime; however, he stated that he could only estimate the need for 11 plows. The costs associated for the 11 plows would be \$6,000, and numbers will fluctuate depending on snow weight, etc. He clarified that ITD provided numbers in 2010 that included vegetation management, which the City contracts to Kootenai County at \$77 a mile, which would add an additional \$800. Patching four to five patch 10 to 20 feet long, striping similar costs to ITD. He mentioned his partnership with ITD for Victoria Drive and the possibly of an agreement for Coeur d'Alene Lake Drive plowing. The City could pick up the area along Ponderosa Golf Course in exchange for their plowing of Coeur d'Alene Lake Drive. Councilman Gookin asked for clarification as to how much it would cost the City to patch and stripe the roadway. Mr. Martin stated that it would be approximately \$6,296 for striping once a year and approximately \$2500 a year for patching. Councilman Gookin asked if the City could use beet juice deicer in that area. Mr. Martin stated that they could, and clarified that the only area they do not use beet juice is the southern part of town.

City Engineer Gordon Dobler stated that he has visually rated the road several times. Based on a rating system between 0-100, with 100 being a brand new road, an overlay would be need at a rating of 40-50; Coeur d'Alene Lake Drive would be rated at 60-70. This fair rating is due to the original design as a highway. There are sections of the road that will need an overlay inside five years; however, the rest of the road can last least 10 years without an overlay. Cost for an overlay is based on whole road, which would be \$1.5 million today, but he does not see the need for a current overlay. Based on the City's system for budgeting overlay, it would add \$17,000 a year to the overlay budget, which would be his recommendation. Councilman Gookin stated that concerns were raised about rocks falling off cliffs and asked how the City would budget for that circumstance. Mr. Dobler stated that he did not see anything alarming, and that it would be a maintenance cost. Mr. Martin stated he periodically gets calls from Cherry Hill and he would respond to it on an as needed basis.

Parks Director Doug Eastwood presented a map and video regarding the property area including a waterside demonstration. The map colors indicate the type of land ownership that ITD currently has. The green outlined property is owned in fee by ITD as the upland property owner. He stated that the Rutledge Trail Head included the possibility of an at-grade crossing when the bridge is removed; and could be a possible future boat launch site. Currently this area has a trailhead, a vault toilet, and parking. There is a potential land trade with Department of Lands, ITD, and a private property owner in order for a future boat launch to be possible on the east of the current marine. He noted that there would be approximately 130 parcels included the land transfer from ITD. The upland property owners have riparian rights to the water, which include easements crossing the trail. Loading and unloading areas would be worthwhile to explore options, as well as view corridors, observation decks, and/or fishing docks. IDPR may not be able to maintain the area into perpetuity; therefore, the City should be prepared for it to take over maintenance at some point. An estimate of potential review that could be generated in the

steamboat trail area would be \$40,000 to \$60,000. The existing trail has been maintained through a Joint Powers Agreement. Councilman Edinger asked if IDPR wanted to turn maintenance over to the City. Mr. Eastwood clarified that it was past administration that sought the City to take over maintenance due to budget constraints, the current administration is willing to continue maintenance. Councilman Edinger asked if the City took over maintenance would the Parks Department need to hire more people. Mr. Eastwood stated that they do have a multi-agency agreement, so the City would trim edges of trail and assist with some irrigated areas and that would take approximately 60-80 hours per year. The City would sweep once a month May – October, at approximately 160-200 hours a year, and have someone in the area every other day at 3-4 hours for litter pickup and to monitoring of the area. He believes that could be covered by seasonal workers paid out of revenues. Additionally, the vault toilets would cost approximately \$2,000 for service. He mentioned the condition of the trees is bad with wind damage, branches broken, decay, etc. and should be included in capital improvements. He felt the Urban Forestry Committee could provide a master plan for the area. Mr. Eastwood clarified that the Veteran's Bridge pull out area has a small existing area. The Redman Hill area could be a location for public mooring docks/day use on the west side. The slide area property is owned by ITD up to the water's edge and the area above is patched annually. Booths Landing has some property line issues that should be settled in court by November. The Beacons Point turn out has nice waterfront access to beach and Osprey Point access point has parking and a beach area. Higgens Point boat launch has parking and overflow parking, and is approximately 5 acres with overnight moorage and day use picnic areas.

Councilman Gookin asked if the little pockets were large enough for the City to build access. Mr. Eastwood stated that they were, especially the area near the Rutledge Trail head, in partnership with ITD, private property owner, and IDPR. Land downhill from ITD upland areas could be options for view areas, day use docks, access points. The corridor is wider in some parts than others and should be master planned to ensure the 5-mile water front corridor is as pristine as possible into perpetuity. The area widens near the Veteran's Bridge turn out point and could be an opportunity for day use/mooring docks. He stated that if the City were the landowner, they could take a deeper look at opportunities to enhance existing sites. Councilman Edinger stated that areas are already being used by the public, so the City would only gain a small amount from owning the area. Mr. Eastwood stated that he does not believe it is being used to its highest and best use and once it starts to deteriorate people will complain to the City, as our citizenry uses that area. Mayor Bloem asked for clarification as to the percentage of parkland the City should own per population stated in the parks master plan. Mr. Eastwood stated that there is a ratio of 4 acres of parkland per 1000 population. The City is currently at 4.5 acres per 1000 population; however, one should look to build out population of 90,000 and understand that less acreage is and will be available over time. Additionally the Master Plan talks specifically to water front access and directs to acquire as much as possible. Councilman Gookin this area is already being maintained by IDPR and is concern that City ownership of this land would not provide any revenue/property taxes. Mr. Eastwood stated that there are revenues generated from the area. Councilman Kennedy asked what the next step is in this process. Mayor Bloem clarified that purpose for the workshop was for Council to be able to ask staff questions, clear up facts, and determine what the advantages of ownership would be. She encouraged Council to use this opportunity to get answers to their questions so that staff may bring this forward for a decision in the near future.

Councilman Goodlander asked for clarification of the future purpose of the ITD property along the northeast edge of the road. Mr. Coleman stated that ITD has no long-term plans for the property. The original purpose for acquisition of the property was for use of a freeway, and over the last 6 years ITD has been facing lower revenues and higher needs, and this has not been a priority. ITD may dispose of the property in the future. Councilman Goodlander asked if there is a possibility to negotiate property acquisition of the upland property. Mr. Coleman stated that some areas are important for the maintenance of I-90, so they would not be interested in disposing of those parcels. When ITD disposes of property, they have to offer to the abutting property owners first. Councilman Edinger asked for clarification of the location and plan for a boat launch east of the Beach House and if there are any current plans. Mr. Eastwood stated that the only item looked at was a conceptual plan near the Rutledge Trail head east of the marina.

Councilman Kennedy if there could be additional language added to the agreement to clarify that is not the intent of the City to annex the abutting property owners. Mr. Gridley stated that they could not do that, as the City cannot bind future council. Mayor Bloem clarified that there is potential revenue from use income on this property. Mr. Eastwood stated that his revenue estimates were based on what IDPR is making at the moorage and use of the property based on what the City currently charges and estimates that would be \$40,000 to \$60,000. Mayor Bloem asked for clarification regarding what happens to the hydroplane races in the future, if the City annexes the property. Mr. Gridley stated that it would depend on what property they use and what permits they seek as the existing Ordinance prohibits issuing any permits and that they would be prohibited from using any property owned by the City. Additionally, there is authority under state law to annex into a body of water approximately 1,000 feet; in that case, they would be subject to prohibition in that area. Councilman Gookin stated that he felt the Council needed to know about the easement issues, not access to the water but points along the road into private property where there could be a lawsuit. Mr. Gridley stated that there are no pending lawsuits. Councilman Gookin stated that he is concerned that when the City inherit easements, they inherit problems too.

Ms. Gabriel clarified that this item would not be heard at tomorrow night's Council meeting, but would be placed on the June 4, 2013 Council meeting.

ADJOURNMENT: Motion by Kennedy seconded by Gookin, to adjourn the meeting. Motion carried.

The meeting adjourned at 2:02 P.M.

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Sandi Bloem, Mayor

ATTEST:

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Renata McLeod  
City Clerk

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

May 21, 2013

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 on May 21, 2013 at 6:00 p.m., there being present upon roll call the following members:

Sandi Bloem, Mayor

Mike Kennedy	)	Members of Council Present
Woody McEvers	)	
Dan Gookin	)	
Steve Adams	)	
Deanna Goodlander	)	
Loren "Ron" Edinger	)	

**CALL TO ORDER:** Mayor Bloem called the meeting to order.

**INVOCATION:** Led by Pastor Ron Hunter, Church of the Nazarene.

**PLEDGE OF ALLEGIANCE:** Councilman McEvers led the pledge of allegiance.

**PRESENTATION: Signal Box Art** - Recreation Director Steve Anthony stated that the Arts Commission had recently worked with local schools to have students design artwork for various signal boxes. Vinyl wrapping technology made it a great opportunity to work with the youth and to digitally reproduce the art onto the utility boxes. Mr. Anthony introduced Mr. Sharnetsky as the Arts Commission member that led this project. Mr. Sharnetsky presented the various signal art selected. Schools involved included Lakes Middle School, Woodland Middle School, Lake City High School, Ramsey Elementary, and Sorensen Elementary. He thanked all the student artists for their hard work. Mayor Bloem thanked Mr. Sharnetsky for his enthusiasm and thanked the artists for their submittals. Councilman Goodlander mentioned that Mr. Sharnetsky has spent many hours working on this project and thanked him for his time.

**PUBLIC COMMENTS:**

**Homestead Avenue Housing:** Peggy Harris, 100 E. Homestead, stated that she was disappointed in the City's approval of a three-story housing facility for low-income disabled persons next door to her. She expressed concern that homeless people will be allowed to live there and that she has lost her privacy in her back yard. She stated that the structure is inappropriate for the residential neighborhood. She is specifically concerned that the lights along the property line are too bright. She is concerned that the property value will not appreciate. Mayor Bloem stated that that the lighting issue can be researched. Councilman Gookin requested Ms. Harris leave her contact information with staff.

**Lake Coeur d'Alene Drive:** Rick Carr, 601 Front Avenue, provided copies of information regarding the Lake Coeur d'Alene Lake Drive acquisition. He owns property east of the Beach House that he plans for future home construction. He provided some history and background regarding the ITD challenge of water front property rights, which led to a Supreme Court case. He was concerned that the presentation yesterday ignored the private property rights. He believes that ITD has provided access for the trail without proper authority, as their easement is for highway purposes only. He believes the Council has incomplete and incorrect information in order to make a decision regarding the acceptance of Lake Coeur d'Alene Drive. He expressed concern that the City estimated the road would only be plowed 11 times a year. He provided a hand out regarding the location of the docks and the proposed boat launch.

Councilman Kennedy stated that he was ambivalent about the acceptance of the land, but felt that someday it would end up in non-state hands. He asked Mr. Carr what he felt the best scenario would be in regard to maintenance of the road and appurtenances. Mr. Carr stated that he believes it is a costly endeavor, and that Eastside Highway District does not want it, which would seem to be the most logical solution. He stated that he believes there is a reason the State wants to abandon it, but does not think the City should take on the increased liability. Councilman Kennedy stated that a constituent commented that this is a similar scenario to Person Field, as there was a lot of discussion over the years, but the purchase/transfer never occurred. In the end, it came to the City at a higher cost. He feels that in looking down the road, based on statements from state officials that they may not want to maintain it in the future, and that the state may be one budget crisis away from being able to maintain it, he wondered how it would come forward. He wondered if a joint powers board/agreement would be an option.

Councilman Edinger stated that he understands that the State cannot just abandon the road if the City and Eastside Highway District do not take it; therefore, the State has to maintain the road. Councilman Kennedy asked if they could go through some sort of de-acquisition process. Mr. Carr said there are so many different types of ownerships along the roadway, so it would not make sense. City Administrator Gabriel stated that ITD has to maintain it unless they transfer to another agency. She did state that they do own some parcels around the roadway that they could surplus by offering it to abutting landowners. Additionally, they could choose to do the bare minimum to maintain roadway and trail. Councilman Goodlander stated that she is also ambivalent about the acceptance of the land. She clarified that the comment Mr. Carr made regarding the garbage cans and restrooms not being serviced on a regular basis would be better maintained by the City, as the City maintain trails very well. Mr. Carr stated that there is a lot of maintenance that does need to occur along the trail and that he wanted to make sure the City knew that there are needs to be addressed. He further stated that if the roadway stayed in ownership of ITD, he felt the plowing was very good, and is sometimes done twice a day with two trucks. Councilman Edinger stated that he got some firsthand information that when ITD offered the land to Eastside Highway District; they did not make the same offer they made the City. He felt that ITD should refocus on an offer to the Eastside Highway District.

Sharon Culbreth, 206 Hubbard Avenue, stated that ITD wants to give the City a white elephant, which is an honor and a burden. She cited examples throughout history of opportunities that caused ruin to the recipient, such as this offer to our City who has an existing overburdened overlay fund.

**Miscellaneous:** Dave Barger, 530 W. Harrison Avenue, stated that liberty requires vigilance and fiduciary responsibility. He recommended the community watch the archive programs regarding disasters in history at public broadcasting.org. He hoped the community would learn from history.

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

**DISCUSSION:** Councilman McEvers requested that Item 8 be separated for an individual discussion. Councilman Gookin requested that item 4(a) be separated for an individual discussion.

1. Approval of Council Minutes for May 7, 2013.
2. Approval of Bills as Submitted.
3. Setting of General Services and Public Works Committees meetings for May 28, 2013 at 12:00 noon and 4:00 p.m. respectively.
4. **RESOLUTION NO. 13-029** 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 ~~APPROVING AN ADDENDUM TO THE PROFESSIONAL SERVICES CONTRACT WITH SCHAFFER'S TOWING AND RECOVERY;~~ AUTHORIZING THE REJECTION OF ATLAS WELL BID AND AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH HOLT SERVICES INC.; AND APPROVING AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH HDR ENGINEERING, INC. FOR WWTP PHASE 5C-1 CONSTRUCTION ADMINISTRATION SERVICES.
5. Designation of Fire Department Only Parking Zone on East Lakeshore Drive.
6. Authorization to Solicit Bids for the Construction of WWTP Phase 5C-1: Initial Tertiary Membrane Filtration/Nitrification Improvements.
7. Setting of public hearing - June 18, 2013 for A-1-13; Annexation of 3528 W. Seltice Way
8. ~~Approval of Nine (9) Fire Works Stands for the 2013 Season~~

**ROLL CALL:** Goodlander, Yes; Gookin, Yes; Kennedy Yes; Edinger, Yes; Adams, Yes; McEvers, Yes. Motion carried.

#### **RESOLUTION NO. 13-029**

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 APPROVING AN ADDENDUM TO THE PROFESSIONAL SERVICES CONTRACT WITH SCHAFFER'S TOWING AND RECOVERY.

Councilman Gookin stated that he had noted that in 2002 the City utilized a rotation system for tow services. He felt it has been too long to go without reviewing the policy or seeking others to provide these services. Councilman Goodlander stated that they have reviewed the policy over time and that the rotation service was not effective. Captain Childers stated that rotation services is not

effective as to response time and services to calls. The current contract had a clause allowing a couple of extension terms and this extension would be the last two-year extension allowed in the Contract. At the end of the extension, the City would seek bids and he expects a couple companies would respond.

**MOTION:** Motion by Goodlander, seconded by Kennedy to approve Consent Calendar item 4(a) of Resolution No. 13-029.

**DISCUSSION:** Councilman Adams stated that he approved the item at General Services as he knew that it would be coming up for rebid soon. Councilman Gookin reiterated that he believes it has been too long and would like the Council to consider opening it up for bids. Councilman Edinger stated he believes this was reviewed a few years ago and they had some companies in the past that were not up to our standards and that is why they agreed to extend the agreement with Schaffer Towing. He understands they have done an excellent job and believes it is acceptable to review in two years.

**ROLL CALL:** Goodlander, Yes; Gookin, No; Kennedy Yes; Edinger, Yes; Adams, Yes; McEvers, Yes. Motion carried.

**Consent Calendar Item 8. Approval of Nine (9) Fire Works Stands for the 2013 Season**

Councilman McEvers stated that he was frustrated that the companies running the stands come from outside of the state of Idaho. Every year he mentions that he does not like the sale of fireworks in the City and that it is a problem for the police. In memory of his father, he will vote against this item because it is for out of state companies and it drains the resources of the police.

**MOTION:** Motion by McEvers, second by Gookin, to deny the firework stand permits.

**DISCUSSION:** Councilman Goodlander stated that she felt it was a too late to deny the 2013 permits, as these businesses already have their inventory. She agreed that the City should start looking at regulations now for the 2014 season.

**ROLL CALL:** Goodlander, No; Gookin, Yes; Kennedy Yes; Edinger, No; Adams, No; McEvers, Yes. Motion failed with the Mayor casting the tie-breaking vote in the negative.

**MOTION:** Motion by Goodlander, seconded by Adams to approve the firework stand permits for 2013.

**ROLL CALL:** Goodlander, Yes; Gookin, No; Kennedy No; Edinger, Yes; Adams, Yes; McEvers, No. Motion carried with the Mayor casting the tie-breaking vote in the affirmative.

**MOTION:** Motion by Goodlander, second by McEvers for staff to prepare regulations that would discontinue firework sales within the City limits in advance of the 2014 season.

**DISCUSSION:** City Attorney Mike Gridley stated that staff could prepare ordinance language for Council review. Councilman Gookin stated that he is concerned that it would take more police and fire resources to enforce safe and sane fireworks as they already have a hard time enforcing illegal

fireworks. Councilman Goodlander clarified the motion was to just prohibit the sale of fireworks within the City, not outlawing fireworks.

**Motion Carried**, with Adams and Edinger voting no.

#### **COUNCIL ANNOUNCEMENTS:**

Councilman Adams thanked the citizens for giving public comment and that Mr. Carr's comments helped him make up his mind regarding the Lake Coeur d'Alene issue.

Councilman Goodlander informed the community that new Art Current pieces would soon be located at the intersection corners downtown and encouraged citizens to enjoy the art.

**ADMINISTRATOR'S REPORT:** City Administrator Wendy Gabriel provided an update regarding McEuen Park progress including that crews have dug the hole where the Harbor House will sit near the Third Street entrance to Tubbs Hill. When completed, the Harbor House will stand as an information center and restroom facility. The South Trail at the base of Tubbs Hill is paved. Other park trails are currently being built. Fine grading of the park and work on the back wall of the parking structure continues. The construction site is off limits to the public. For your safety, please do not enter the site even if gates are open. There is plenty of parking downtown; including free spots are at the new lot at City Hall and at Memorial Field along Northwest Boulevard. Maps for parking are available at the Chamber of Commerce, local businesses, and City Hall. You can also visit the city's website at [www.cdaid.org](http://www.cdaid.org). She stated that downtown businesses are open and encourage citizens to patronize them. The Third Street Boat Launch will close June 1st so construction crews can have better access to McEuen Park. The launch will reopen September 30th. The City recognizes this is an inconvenience for boaters who use the launch and have put together an interactive map of other nearby launches that should help boaters this summer. The map can be found on the main page of the City's website at [www.cdaid.org](http://www.cdaid.org). Maps are also available that detail traffic routes, parking, and available boat ramps during the McEuen Park construction. You can download the maps from our website at [www.cdaid.org](http://www.cdaid.org), or they are also available at local downtown businesses, the Chamber of Commerce, and at City Hall. Please call Dennis Grant, Project Coordinator, with any questions regarding the McEuen project, at 769-2398. Vandalism, including graffiti and broken urinals and toilets, occurred to the City Park restrooms. Damages will run approximately \$2,000 to repair. This recent round of vandalism brings the total amount of damages to parks to approximately \$12,000 in the month of May alone. She encouraged citizens to keep their eyes open and report any unusual activities to the Police Department. The City of Coeur d'Alene Arts Commission is also seeking artists for a McEuen Park Interactive Sculpture. The Interactive Sculpture will be located at the South/Center Trail Confluence of McEuen Park. The goal for the Interactive Sculpture is to significantly beautify the southern side of the revitalized McEuen Park. Other than having some sort of interactive component, there is no theme to this Call to Artists, allowing for open interpretation and creativity to make a lasting impression on residents and visitors. Information packets are available at City Hall, 710 E. Mullan Avenue, or online at [www.cdaid.org](http://www.cdaid.org). Artist proposals are due by 5:00 p.m., June 21, 2013. Artists with questions are encouraged to contact Steve Anthony, Arts Commission Liaison, at 769-2249. The Coeur d'Alene Arts Commission is seeking artists for public art to be located at the McEuen Park Third

Street Entrance. The goal for the piece is to significantly beautify one of the primary entrances of the revitalized McEuen Park. It is meant to be a piece of public art visually enjoyed by visitors to the park, as well as a feature of the park that can be seen by passersby. Located at a busy thoroughfare of the park and neighboring street, the area around the art will receive a lot of vehicle and foot traffic as visitors enter and exit the park. Submission Deadline is June 21, 2013. To download and print the Call to Artists, visit our website at [www.cdavid.org](http://www.cdavid.org), or call Steve Anthony at 769-2249 for more information. Nearly eleven years ago, the Coeur d'Alene City Council passed an ordinance allowing youth representation on City Boards, Commissions, and Committees. If one is interested in serving as a student representative, visit [www.cdavid.org](http://www.cdavid.org) and print out an informational letter and application form. Deadline for Applications is May 31st. The 2013 Summer Arts for Youth program begins in June. This award winning arts program for youth is sponsored by the Coeur d'Alene Arts Commission. Please visit our website at [www.cdavid.org](http://www.cdavid.org) to download the complete brochure. On Saturday, our Recreation Director, Steve Anthony, represented the City and Specialized Needs Recreation at the Grand Opening of Sports Authority. Corporate officials presented Specialized Needs Recreation with a check for \$1,000. Citizens continue to be strong supporters of the City's recycling program. In April, 346,466 pounds of refuse that would have been sent to the County Landfill were recycled. She thanked the community for their efforts to recycle resources, as they are making a difference. The City of Coeur d'Alene is asking Time Warner Cable subscribers for feedback on CdA-TV Channel 19, the City's government and public education channel. The Committee wants to know who is tuning in and what specifically they are watching, in an effort to provide desired programming. Channel 19 currently airs Coeur d'Alene City Council meetings, SD-271 Board meetings, North Idaho College Board meetings, City of Hayden City Council meetings, "Coffee with the Mayor" and other city and education-related programming. Viewers can share their feedback in a survey posted on the City's website at [www.cdavid.org](http://www.cdavid.org). The simple 10-question survey will be available until June 28th. The goats have returned to eat the weeds at the City water tank, booster station, and well sites. They are starting at the reservoirs and booster stations then moving on to the wells in a couple weeks. North Idaho College/Patrol Academy held its graduation on May 10th. Training officers in North Idaho rather than at the P.O.S.T. Academy in Meridian, Idaho allows the City to use its own instructors from the Police Department and other local departments. In addition, the recruits get to go home at night and on weekends, which aids in helping single parents to enter the law enforcement profession. Four Coeur d'Alene Police Department Officers graduated from the 13-week academy and now start the Field Training part of their ongoing training. She congratulated Rylee Phillips, Jacob Rodgers, Jacob Nielsen, and Ashley Caiafa. Ashley was elected Class President by her peers and gave an address during the graduation ceremony. The City's Building Services Department would like to inform contractors and homeowners that there will be no building, mechanical, or plumbing inspections performed on Tuesday, May 28th, in the City of Coeur d'Alene jurisdiction due to required staff training for continuing education credits on the 2012 International Building Code Accessibility Requirements. Please call the Building Department at 769-2267 for more information. This morning, area public safety agencies put on a Mock DUI Crash for the benefit of students at Lake City High School. Patrol units from the CDA PD, KC Sheriff's Department, Idaho State Police, CDA Fire Department, and Air 1 all participated. The PD participates in the event each year in an effort to educate our young people about the hazards of drinking and driving.

### **RESOLUTION NO. 13-030**

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO APPROVING THE THIRD AMENDMENT TO THE MASTER LEASE WITH THE REGENTS OF THE UNIVERSITY OF IDAHO, FOR PREMISES AT HARBOR CENTER.

**MOTION:** Motion by Kennedy, seconded by Goodlander, to adopt Resolution 13-030.

**DISCUSSION:** Councilman Kennedy stated that this lease has gone on for a number of years, and believes in the partnership with University of Idaho and that the higher education partnership is vital to the citizens. Additionally, our Wastewater Treatment Department supports this partnership and the location is right. Councilman Gookin stated that he agrees that education is important but does not believe it is a part of the City's mission statement, as it is a responsibility of the state. The City has other responsibilities such as the streets. He stated that he has spoken with Dr. Buck from the University of Idaho and thinks it is great that they are here. The building is owned by Wastewater and the General Fund and he believes that the City should not be a landlord. The proper thing to do is to sell the building to the University. Councilman Kennedy stated that the state funds for education are at an all-time low, and it would be a burden for the state to find the money to purchase the building owned by the public to sell to the public. Discussion ensued between Councilman Kennedy and Councilman Gookin regarding political philosophy.

**MOTION:** Motion by Edinger to call for the question. **Motion carried with Gookin voting no.**

**ROLL CALL ON MAIN MOTION:** Gookin, No; Kennedy Yes; Edinger, Yes; Adams, No; McEvers, Yes; Goodlander, Yes. Motion carried.

**REMOVAL OF ALLEY GARBAGE SERVICE BETWEEN MELROSE AVENUE AND MEDINA AVENUE, NORTH OF EMMA AVENUE:** Councilman Kennedy explained the need to close the alley garbage service stems from a request of Waste Management due to safety concerns. Driveways are available for the effected parties and will be used for garbage pick up.

**MOTION:** Motion by Kennedy, seconded by Edinger, to authorize the removal of alley garbage service between Melrose Avenue and Medina Avenue, North of Emma Avenue. **Motion carried.**

### **RESOLUTION NO. 13-031**

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO APPROVING A PERSONAL SERVICES AGREEMENT WITH JENNIFER CORIO FOR CREATION AND INSTALLATION OF PUBLIC ART AT 4<sup>TH</sup> STREET AND KATHLEEN AVENUE ROUNDABOUT.

**MOTION:** Motion by Kennedy, seconded by Goodlander, to adopt Resolution 13-031.

**DISCUSSION:** Councilman Goodlander explained that the art maquette on display is a model of the art that will go in the round about and that it was selected by a citizen committee.

**ROLL CALL:** Kennedy Yes; Edinger Yes; Adams Yes; McEvers Yes; Goodlander Yes; Gookin No. **Motion carried.**

**DESIGN REVIEW FEE REVIEW:**

**MOTION:** Motion by Kennedy, seconded by Edinger, to direct staff to prepare an Ordinance to set the applicable fee for design review.

**DISCUSSION:** Councilman Gookin stated that he is confused about why this came forward. Assistant Planner Tami Stroud stated that this came forward as a tickler item, based on a motion made by the Council in 2010 requesting staff bring this item back for discussion in three years and three years have passed. Councilman Gookin clarified that this fee would apply to all projects within the zone that meet the requirements. Ms. Stroud confirmed that was true and reiterated there was one project that has met that criteria.

**Motion Carried,** with Goodlander voting no.

ORDINANCE NO. 3464  
COUNCIL BILL NO. 13-1010

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AMENDING 5.08.140 TO AUTHORIZE SALES OF LIQUOR BY THE DRINK ON MEMORIAL DAY, THANKSGIVING, SUNDAYS AND DAILY UNTIL 2:00 A.M.; PROVIDING REPEAL OF CONFLICTING ORDINANCES; PROVIDING SEVERABILITY; PROVIDING THE PUBLICATION OF A SUMMARY AND PROVIDING AN EFFECTIVE DATE.

**MOTION:** Motion by Kennedy, seconded by Adams to pass the first reading of Council Bill No. **13-1010**.

**ROLL CALL:** Kennedy Yes; Edinger Yes; Adams Yes; McEvers Yes; Goodlander Yes; Gookin Yes. **Motion Carried.**

**MOTION:** Motion by Goodlander, seconded by Edinger to suspend the rules and to adopt Council Bill No. **13-1010** by its having had one reading by title only.

**ROLL CALL:** Kennedy Yes; Edinger Yes; Adams Yes; McEvers Yes; Goodlander Yes; Gookin Yes. **Motion Carried.**

ORDINANCE NO. 3465  
COUNCIL BILL NO. 13-1009

AN ORDINANCE AMENDING THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AMENDING MUNICIPAL CODE SECTION 4.25.030 TO ALLOW ALCOHOL TO BE SERVED AT RIVERSTONE PARK GAZEBO, THE JEWETT HOUSE, CITY PARK AND MCEUEN PARK BY PERMIT ONLY; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDE FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND AN EFFECTIVE DATE HEREOF.

**MOTION:** Motion by Kennedy, seconded by Edinger to pass the first reading of Council Bill No. 13-1009.

**DISCUSSION:** Councilman Gookin had previously express concern when discussions took place to allow alcohol at Jewett House as he believes the City should allow alcohol consumption at all parks like Post Falls, rather than adding exception. He stated that this was a step in the right direction. Councilman McEvers agreed that baby steps were a good start.

**ROLL CALL:** Edinger Yes; Adams Yes; McEvers Yes; Goodlander Yes; Gookin Yes; Kennedy Yes. **Motion carried.**

**MOTION:** Motion by Edinger, seconded by Kennedy to suspend the rules and to adopt Council Bill No. 13-1009 by its having had one reading by title only.

**ROLL CALL:** Edinger Yes; Adams Yes; McEvers Yes; Goodlander Yes; Gookin Yes; Kennedy Yes. **Motion carried.**

**MOTION:** Motion by Gookin, seconded by Adams to request staff to review and recommend regulations allowing consumption of alcohol at all parks, with input from the Police Department. **Motion Carried.**

**APPROVAL OF A GRANT FOR TWO POLICE PATROL POSITIONS:**

**Staff Report:** Chief Longo and Sgt. Tilson provided a presentation regarding the Community Oriented Policing Service (C.O.P.S.) Grant program. The C.O.P.S. program was first approved in 2009. This became a method of funding police positions during the economic downturn. The proposed grant will cover up to \$125,000 in wages for three years, with the fourth year required to be paid out of non-grant funds. The need for the positions began in 2008 when four patrol positions were frozen, and two positions are still frozen. During the past 10 years calls for service and crime statistics show a 22% increase, the Department has seen increases in special events, and an increase in population. He provided an overview of the grant requirements and reporting. Sgt. Tilson reiterated that the positions would be used in patrol, increasing the ratios of officers to public.

**MOTION:** Motion by Kennedy, seconded by Goodlander to approve the submittal of a grant request for two patrol positions.

**DISCUSSION:** Councilman Kennedy stated that staff levels are not easy to balance, and these grants are not always permanent, so it makes funding over time manageable. More police on the street is needed and helpful. Councilman McEvers questioned if the 2009 grant worked the same way as this proposed grant. Finance Director Troy Tymesen stated that the grants were the same and that leveraging dollars is an efficient way of managing staffing levels. He clarified that the City does not know when these grants are going to be available, so they have to be responded to quickly. Councilman Gookin stated that he understands that there are strings that come with a grant; however, the City needs the police positions and he will support this item. Councilman Adams stated that he has made his position clear, and clarified that as a fundamental fact government does not produce anything; therefore it has nothing to give. Anything the government gives away it must take from somebody else to do, therefore violating their rights. He believes it is a liberty and moral issue. He believes modest restructuring within the budget could cover the positions.

**Motion carried** with Adams voting no.

## **CITY PARTICIPATION IN CDA 2030 COMMUNITY VISIONING PROCESS**

**Staff Report:** Mr. Gridley stated that one of the side benefits of being involved in this process is meeting people throughout the community. Mr. Gridley stated that the request is coming forward from the organizing group to assist with the funding needed to complete the visioning project. The budget is estimated at \$150,000 over a twelve-month period. It is still the consensus of the group that the City should not lead this endeavor; however, it is an important part of the process. Most cities would fund the project in its entirety, but the planning group has garnered funding from other sources and is asking for a 20% commitment, which would be \$30,000. Dr. Charles Buck (University of Idaho), the leader of the planning group, stated that from the university perspective they are excited to be involved and have the ability to bring the university resources to the community. The connection to the community is important to their success.

Councilman Edinger asked where the money would come from within the City budget. Mr. Gridley stated there were funds budgeted toward an east Sherman study that have not been used and at this point in the year are likely to not be used. He does believe that the East Sherman Project will come forward as a priority in the visioning process. The Legal Department has funds in a professional services line item, and another funding option would be unanticipated revenues from building permits.

Councilman Kennedy asked Mr. Buck if he has reached out to the public policy committee for use of research interns. Mr. Buck stated that they have listed the resources they could utilize within the University and will start making contacts soon, including the public policy group.

**MOTION:** Motion by Kennedy, seconded by McEvers to approve the City participation in the CDA 2030 Community Vision Process in the amount of \$30,000.

**DISCUSSION:** Councilman Gookin stated that he has been involved in this project and has kept an open mind, but had concerns that not all of the community has been involved, and also with the budget. Additionally, he is concerned that historically studies like this are completed and parked on a shelf. Mr. Gridley stated this process is viewed as a community-wide process, including the Coeur d'Alene Tribe. It is intended to allow everyone to participate in the process and engage in government in a positive way. He clarified that it is hard to say what will come out of this, but what is different about this is that it is designed to have action plans including specific dates and achievement of goals prioritized by the community. Councilman Gookin recommends that they strongly utilize Dave Yadon as a leading planner in the state.

**Motion carried** with Adams voting No.

**PUBLIC HEARING: CDBG Consolidated Annual Performance and Evaluation Report (CAPER) Plan Year 2012**

**Staff Report:** Sherri Wastweet, Grant Administrator with Panhandle Area Council, presented a summary of the Plan Year 2012 Consolidated Annual Performance and Evaluation Report (CAPER). The City received \$262,325 in funding for the Plan Year 2012, which was utilized for the repayment of the 106 Homestead property purchase, Emergency Minor Home Repair Program, Harrison Avenue Sidewalk Program, and Administration.

**PUBLIC COMMENTS:** Mayor Bloem called for public comments with none being received.

**MOTION:** Motion by Kennedy, seconded by McEvers to approve the Plan Year 2012 CAPER for submittal to HUD. **Motion carried.**

**MOTION:** Motion by Goodlander, seconded by McEvers that, there being no further business before the Council, this meeting is adjourned. **Motion carried.**

The meeting adjourned at 8:29 p.m.

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Sandi Bloem, Mayor

ATTEST:

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Renata McLeod, City Clerk

RESOLUTION NO. 13-032

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 MAYOR TO ISSUE A DECLARATION OF EMERGENCY FOR THE LANDINGS WELL PUMP REPLACEMENT AND DISPENSE WITH BID REQUIREMENTS FOR EMERGENCY PURCHASING OF ALL RELATED EQUIPMENT, MATERIALS, SUPPLIES, AND SERVICES AS ALLOWED BY SECTION 67-2808 OF THE IDAHO CODE.; APPROVING AN ENCROACHMENT PERMIT TO ALLOW SEVENTH AND SHERMAN, LLC TO INSTALL LANDSCAPING AREAS ON THE SIDEWALK ON SEVENTH AVENUE; AND APPROVING AN AGREEMENT WITH HOLT SERVICES INC., FOR THE ATLAS 2 WELL PROJECT.

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 C" and by reference made a part hereof as summarized as follows:

- A) Declaring an emergency to authorize all necessary expenditures of public money to perform emergency repair work to the Landings Well without compliance with bidding procedures in order to safeguard life, health and property as authorized by Section 67-2808 of the Idaho Code;
- B) Approving an Encroachment Permit to allow Seventh and Sherman, LLC to install landscaping areas on the sidewalk on Seventh Avenue;
- C) Approving an Agreement with Holt Services Inc., for the Atlas 2 Well Project;

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 C" 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 4<sup>th</sup> day of June, 2013.

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

ATTEST

\_\_\_\_\_  
Renata McLeod, 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 \_\_\_\_\_.

**PUBLIC WORKS COMMITTEE  
STAFF REPORT**

**DATE:** May 24, 2013  
**FROM:** Terry W. Pickel, Assistant Water Superintendent  
**SUBJECT:** Declaration of Emergency, Authorization to Dispense with Bid Requirement

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**DECISION POINT:** Staff requests that Council authorize the Mayor to issue a Declaration of Emergency as allowed by Idaho Code and dispense with bid requirements for emergency purchasing. Following normal bid procedures would not allow staff to get the Landings Well back online in time to meet the peak summer demand.

**HISTORY:** The Landings Well was recently rebuilt by RC Worst as routine maintenance under the Water Department's Bi-annual Well Rehabilitation Program. The program was established to provide a 20 year rotation schedule of pump maintenance. Unfortunately, only a month after repairs were completed, the Landings Well pump has catastrophically failed due to an unknown cause at this time. The level of destruction was massive and will require complete replacement of the entire pump assembly which includes the pump bowls, shaft, columns, spider bearings, discharge head and motor. Staff is attempting to ascertain whether there is any damage to the pump electrical system and the SCADA control system which may require additional repairs if there is damage. Fortunately, a video of the well revealed no obvious internal damage to the casing and screens. As summer is quickly approaching, we will be in need of this well to meet the peak summer demands. Thus the request to dispense with bidding requirements.

**FINANCIAL ANALYSIS:** The initial rough estimate for a replacement pump assembly is between \$150,000 and \$200,000. If the pump electrical panel is damaged beyond repair, this could result in an additional \$80,000 to \$100,000 for replacement. The replacement SCADA Panel could be between \$12,000 and \$18,000. There was significant smoke damage to the building and at this time it is unknown if there are any structural issues. Staff does not have an estimate of the building cleanup and repair costs as a thorough inspection has not been scheduled yet. Insurance should cover the costs, however expediency is prudent to get the well back online as quickly as possible.

**PERFORMANCE ANALYSIS:** In checking with our Legal Department, staff was provided with the following information: Idaho Code 67-2808 Emergency expenditures – Sole source expenditures. (1) Emergency expenditures. (a) “The governing board of a political subdivision may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money if: 67-2808(1)(a)(iii) It is necessary to do emergency work to safeguard life, health or property”. Under IDAPA 58.01.08, the public water system must provide sufficient capacity to meet fire flow and peak demands to protect the public health of the system's customers. Without this well online by early July, the potential for low pressure conditions under 20 psi exists which is identified under the IDAPA Rule as a possible health risk and a violation of the Rule. The water system also will not be able to meet the peak demands. Water curtailment measures may be necessary to reduce the potential risk without immediate replacement.

**DECISION POINT/RECOMMENDATION:** Staff requests that Council authorize the Mayor to issue a Declaration of Emergency for the Landings Well Pump replacement and dispense with bid requirements for emergency purchasing of all related equipment, materials, supplies and services as allowed by section 67-2808 of the Idaho Code.

**PUBLIC WORKS COMMITTEE  
STAFF REPORT**

**DATE:** May 24, 2013  
**FROM:** Terry W. Pickel, Assistant Water Superintendent  
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**PUBLIC WORKS COMMITTEE  
STAFF REPORT**

DATE: May 28th, 2013  
FROM: Warren Wilson, Deputy City Attorney  
SUBJECT: Encroachment Agreement for Seventh and Sherman

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**DECISION POINT:**

Recommend that the full Council approve the attached encroachment agreement to allow Seventh and Sherman, LLC (“Applicant”) to install landscaping areas on the sidewalk on Seventh Avenue.

**HISTORY:**

The applicant recently completed construction of the new building at Seventh and Sherman (Subway). As part of the Design Review Process the applicant proposed installing landscaping along Seventh Ave. to meet the design review criteria. The applicant is now ready to install the landscaping areas and needs the city to approve the attached encroachment agreement that will authorize the installation of the planters.

**FINANCIAL ANALYSIS:**

There is no quantifiable financial impact to approving the agreement. Under the agreement, the applicant bears all costs for installation and removal of the proposed encroachment.

**PERFORMANCE / QUALITY OF LIFE ANALYSIS:**

The proposed encroachment is approx. 2’6” wide x 6’ high x 43’ long. There is sufficient sidewalk width in this area to allow the encroachment. Further, approving the encroachment agreement will allow the applicant to comply with the approved design for the building, which will help enhance the downtown area.

**DECISION POINT/RECOMMENDATION:**

Recommend that the full Council approve the attached encroachment agreement to allow Seventh and Sherman, LLC (“Applicant”) to install landscaping areas on the sidewalk on Seventh Avenue.

## ENCROACHMENT AGREEMENT

The **City of Coeur d'Alene**, Kootenai County, Idaho, a municipal corporation and political subdivision of the state of Idaho, hereinafter referred to as the "**City**," hereby grants permission to **Seventh and Sherman, LLC**, a Limited Liability Company organized under the laws of Idaho, hereinafter referred to as "Seventh and Sherman," to encroach in public right-of-way on Seventh Street in the vicinity of the intersection with Sherman Avenue (the building located at 704 E. Sherman Ave).

This agreement is reached upon the following terms:

1. The permission to use public right of way is granted solely for the construction of a planter box as depicted in the attached Exhibit "A", which by this reference is incorporated herein. The encroachment may not exceed the maximum dimensions depicted in Exhibit "A" without the prior written consent of the City.

2. The City shall have the right to terminate this agreement 90 days after giving written notice to "Seventh and Sherman" at 915 W. Jefferson Street (c/o VIQ Development, LLC), Boise, ID, 83702, of its intention to terminate this agreement. Seventh and Sherman will be deemed to have received written notice when such notice addressed to Seventh and Sherman at the location hereinbefore described is deposited in the United States mail so addressed, with proper postage affixed thereto. Seventh and Sherman will remove such encroachment within 90 days of receiving such notice at its sole cost. Should Seventh and Sherman fail to remove the encroachment, the City may remove the encroachment at the expense of Seventh and Sherman.

3. Seventh and Sherman will remove the encroachment prior to terminating business at this location. In the event that Seventh and Sherman fails to remove the encroachment, the City may remove the encroachment at the expense of the Seventh and Sherman.

4. Nothing herein contained shall imply or import a covenant on the part of the City for quiet enjoyment of the real estate upon which the encroachment is constructed, it being understood by the parties that the City's right and power to issue such permit is limited.

5. Seventh and Sherman will indemnify, defend (at the city's option), and hold the City harmless from any liability resulting from the encroachment including construction or maintenance thereof. Seventh and Sherman further agrees that said encroachment shall be maintained by Seventh and Sherman in a condition so as not to constitute a public hazard. Seventh and Sherman will maintain, at all times, liability insurance naming the City as an additional insured in the amount of Five Hundred Thousand Dollars (\$500,000) for property damage or bodily or personal injury, death, or loss as a result of any one occurrence or accident regardless of the number of persons injured or the number of claimants, it being the intention that the minimum limits shall be those provided for under Chapter 9, Title 6, Section 24 of the Idaho Code. Seventh and Sherman will furnish and install barriers and warning lights during construction to prevent accidents.

6. Seventh and Sherman will furnish the City certificates of the insurance coverage required herein, which certificates must be approved by the City Attorney.

7. All costs for said encroachment including but not limited to construction, maintenance, use or operation now or in the future shall be born by Seventh and Sherman.

8. Seventh and Sherman will comply with all laws affecting the property described herein including the Americans with Disabilities Act.

9. It is understood by Seventh and Sherman that it will hold the City harmless from liability from damages from any lack of authority or jurisdiction to grant this permit.

10. Seventh and Sherman agrees it will not encroach beyond the maximum limits allowed herein and that said encroachment is allowed only for the purposes set forth herein and shall not be expanded.

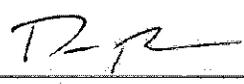
11. This agreement shall be binding on Seventh and Sherman, its heirs, assigns and successors in interest.

IN WITNESS WHEREOF, the parties hereto have executed this permit on this 20th day of March, 2013.

**CITY OF COEUR D'ALENE**

**SEVENTH AND SHERMAN, LLC**

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

  
\_\_\_\_\_  
By: Paul Pennington

Its: Managing Director

**ATTEST:**

\_\_\_\_\_  
Renata McLeod, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this \_\_\_ day of \_\_\_\_\_, 2013, before me a Notary Public, personally appeared **Sandi Bloem and Renata McLeod**, known to me to be the Mayor and City Clerk respectively, of the City of Coeur d'Alene that 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: \_\_\_\_\_

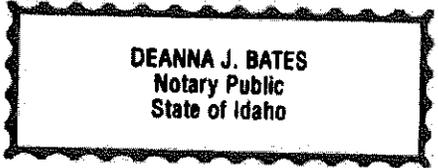
\*\*\*\*\*

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this 9<sup>th</sup> day of May, 2013, before me, a Notary Public, personally appeared **Paul Pennington**, known or identified to me to be the Member *Managing Director* of **Seventh and Sherman, LLC** and the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that such limited liability company 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.

Deanna J Bates  
Notary Public for Idaho  
Residing at Boise Idaho  
My Commission Expires: 11/22/17





**CITY COUNCIL  
STAFF REPORT**

**DATE:** June 4, 2013  
**FROM:** Terry W. Pickel, Assistant Water Superintendent  
**SUBJECT:** Approval of contract for Atlas Well 2

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**DECISION POINT:** Staff requests Council approval of a contract with Holt Services, Inc. for the drilling of the Atlas Well 2.

**HISTORY:** The Water Department is currently in the process of attempting to drill a new production well on property just north of Hanley Ave. and Atlas Rd. A test well has been drilled at this site and test pumped to ensure good water quality in preparation to drill the much larger production well. Welch Comer was the engineering firm selected to design the new source and oversee construction. Bids were let for drilling the first and second week of April with a bid opening date of April 24<sup>th</sup>. Despite aggressively seeking bids, only one bid was received from Holt Services, Inc. Unfortunately, the sole bidder did not have a current public works contractor's license in Idaho at the time of the bid opening which by Idaho Code disqualified them from bidding. Under Idaho Code 67-2805, the bid was properly rejected and once the contractor acquired his Idaho public works license, a contract price was negotiated pursuant to the Idaho Code.

**FINANCIAL ANALYSIS:** Under the bid process, the Water Department received one bid in the sum of \$223,760.00 from Holt Services, Inc. The engineer's estimate was \$228,000.00. As previously mentioned, the sole bidder did not have a current public works contractor's license for the state of Idaho at the time of the bid resulting in a non-responsive bid submittal. This being the case, no qualified bids were received. Under Idaho Code 67-2805, Water Department staff entered into negotiation with Holt Services, Inc. who subsequently agreed to hold their bid price of \$223,760.00.

**PERFORMANCE ANALYSIS:** During the bid process, in checking with the Legal Department, staff was provided with the following information. Idaho Code 67-2805(3)(a) provides that bidding on public works contracts is only open to licensed public works contractors. Therefore the contract cannot be awarded and the bid must be rejected by the Council. However, Idaho Code 67-2805(3)(a)(viii) provides, when no qualified bids are received, the city can proceed with the work without further competitive bidding. The sole existing bid was rejected by Council on May 21<sup>st</sup> at the regular Council meeting. Holt Services, Inc. has recently acquired their Idaho public works contractor's license and is now able to perform the work. Staff has negotiated a contract for the original bid sum and plans to move forward with the project.

**DECISION POINT/RECOMMENDATION:** Staff requests that the Council approve a contract with Holt Services, Inc. for the sum of \$223,760.00 for the drilling of the new Atlas Well 2.

## AGREEMENT (CONTRACT)

THIS CONTRACT, made and entered into this 4th day of June, 2013, 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 "CITY", and HOLT SERVICES, INC., a corporation duly organized and existing under and by virtue of the laws of the state of Washington, with its principal place of business at 10621 Todd Rd. E., Edgewood, Washington 98372, hereinafter referred to as the CONTRACTOR.

### WITNESSETH:

THAT, WHEREAS, the said CONTRACTOR has been awarded the contract for City of Coeur d'Alene Water Department **DRILLING, CONSTRUCTION AND TEST PUMPING OF ATLAS 2 WELL** in Coeur d'Alene, according to plans and specifications on file in the office of the City Clerk of the CITY, which plans and specifications are entitled:

IT IS AGREED that for and in consideration of the covenants and agreements to be made and performed by the CITY OF COEUR D'ALENE, as hereinafter set forth, the CONTRACTOR shall construct and install a modular administrative building as set forth in the said plans and specifications described above, in said city, furnishing all labor and materials therefore according to said plans and specifications and under the penalties expressed in the performance bond bearing even date herewith, and which bond with said plans and specifications are hereby declared and accepted as parts of this contract. All material shall be of the high standard required by the said plans and specifications and approved by the Water Superintendent, and all labor performed shall be of first-class workmanship.

The CONTRACTOR shall employ appropriate means to prevent accidents and defend the CITY from all claims for injury to person or property resulting from the CONTRACTOR's actions or omissions in performance of this contract, and to that end shall maintain insurance of the type and in the amount specified in the Contract Documents, it being the intention that the minimum limits shall be those provided for under Chapter 9, Title 6, Section 24 of the Idaho Code. Certificates of insurance providing at least thirty (30) days written notice to the City prior to cancellation of the policy shall be filed in the office of the City Clerk.

The CONTRACTOR agrees to maintain Workman's' Compensation coverage on all employees, including employees of subcontractors, during the term of this contract as required by Idaho Code Sections 72-101 through 72-806. Should the CONTRACTOR fail to maintain such insurance during the entire term hereof, the CITY shall indemnify the CONTRACTOR against any loss resulting to the CITY from such failure, either by way of compensation or additional premium liability. The CONTRACTOR shall furnish to the CITY, prior to commencement of the work, such evidence as the CITY may require guaranteeing contributions which will come due under the Employment Security Law including, at the option of the CITY, a surety bond in an amount sufficient to make such payments.

The CONTRACTOR shall furnish the CITY certificates of the insurance coverage's required herein, which certificates must be approved by the City Attorney.

The CITY OF COEUR D'ALENE, the CITY, shall pay to the CONTRACTOR for the work, services and materials herein provided to be done and furnished by it, the sum of **Two Hundred Twenty-Three Thousand Seven Hundred Sixty Dollars and No/100's (\$223,760.00)**, as hereinafter provided. Partial payment shall be made on the third Tuesday of each calendar month on a duly certified estimate of the work completed in the previous calendar month less five percent (5%). Final payment shall be made thirty (30) days after completion of all work and acceptance by the City Council, provided that the contractor has obtained from the Idaho State Tax Commission and submitted to the City a release of liability for taxes (Form 10-248-79).

The CONTRACTOR shall complete all work and be ready for final acceptance within **seventy (70) calendar days** of the commencement date given in the Notice to Proceed issued by the CITY. The CONTRACTOR shall complete all work necessary to build and install the Water Department modular administrative building fully operational and inhabitable within the above specified time frame.

The CITY and the CONTRACTOR recognize that time is of the essence and failure of the CONTRACTOR to complete the work within the time allowed shall result in damages being sustained by the CITY. Such damages are and will continue to be impractical and extremely difficult to determine. Therefore, in the event the CONTRACTOR shall fail to complete the work within the above time limit, the CONTRACTOR shall pay to the CITY or have withheld from moneys due, liquidated damages at the rate of **\$500.00** per calendar day, which sums shall not be construed as a penalty.

The CONTRACTOR further agrees: In consideration of securing the business of constructing the works to be constructed under this contract, recognizing the business in which he is engaged is of a transitory character and that in the pursuit thereof, his property used therein may be without the state of Idaho when taxes, excises or license fees to which he is liable become payable, agrees:

1. To pay promptly when due all taxes (other than on real property), excises and license fees due to the State of Idaho, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term.
2. That if the said taxes, excises and license fees are not payable at the end of said term but liability for said payment thereof exists, even though the same constitutes liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof.
3. That in the event of his default in the payment or securing of such taxes, excises and license fees, to consent that the department, officer, board or taxing unit entering into this contract may withhold from any payment due him thereunder the estimated amount of such accrued and accruing taxes, excises and license fees for the benefit of all taxing units to which said contractor is liable.

IT IS FURTHER AGREED that for additions or deductions to the plans and specifications, the unit prices as set forth in the written proposal of the CONTRACTOR are hereby made a part of this contract.

For the faithful performance of this contract in accordance with the plans and specifications and payment for all labor and materials, the CONTRACTOR shall execute good and sufficient performance bond and payment bond each in the amount of one hundred percent (100%) of the total amount of the bid as herein before stated, said bonds to be executed by a surety company authorized to do business in the state of Idaho.

The term "CONTRACT DOCUMENTS" are defined in Section 2 of the Contract Documents, entitled, "Standard General Conditions of the Construction Contract.

THIS CONTRACT, with all of its forms, specifications and stipulations, shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the Mayor and City Clerk of the CITY OF COEUR D'ALENE have executed this contract on behalf of said city, the City Clerk has affixed the seal of said city hereto, and the CONTRACTOR has caused the same to be signed by its President, and its seal to be affixed hereto, the day and year first above written.

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

**CONTRACTOR:**  
HOLT SEVICES, INC.

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

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

ATTEST:  
  
\_\_\_\_\_  
Renata McCleod, City Clerk

ATTEST:  
  
\_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this \_\_\_\_ day of June, 2013, before me, a Notary Public, personally appeared **Sandi Bloem** and **Renata McLeod**, known to me to be the Mayor and City Clerk, respectively, of the City of Coeur d'Alene that 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 \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of June, 2013, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, of Holt Services, Inc., and the person 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.

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**PUBLIC WORKS COMMITTEE STAFF REPORT**

**DATE:** May 28, 2013  
**FROM:** James Remitz, Capital Program Manager  
**SUBJECT:** **Acceptance of Offer of Loan WW # 1307 from the Idaho Department of Environmental Quality Clean Water State Revolving Fund for WWTP Phase 5C.1 Project**

=====

**DECISION POINT:**

The Council may wish to accept a loan offer from the state of Idaho Department of Environmental Quality Clean Water State Revolving Fund in the amount of \$ 7,700,000 for the design and construction of the City of Coeur d'Alene Wastewater Department Phase 5C.1, Initial Tertiary Membrane Filtration and Nitrification Improvements. The Offer of Loan is attached for your review

**HISTORY:**

Phase 5C.1 is the next phase of improvements to the Coeur d'Alene Wastewater Treatment Plant (WWTP) that will allow for the compliance with new NPDES Permit biological nutrient limits (particularly phosphorus). The project is designed and currently soliciting bids for construction..

**FINANCIAL ANALYSIS:**

The terms of the loan are very advantageous to the City to fund this project. The \$ 7,700,000 loan has an interest rate of 2.00% with a term of 20 years. The loan will be repaid by the issuance of revenue bonds. The City has recently received the authority to incur debt for this project through judicial confirmation.

**RECOMMENDATION:**

Wastewater staff recommends that the City Council accept the Offer of Loan # 1307 and authorize the Mayor to sign said offer.

## **RESOLUTION NO. 13-033**

WHEREAS, the City of Coeur d'Alene, Kootenai County, Idaho (the "City") is a body politic and corporate duly organized, operating and existing under and pursuant to the provisions of the Constitution and the laws of the State of Idaho;

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 wastewater system of the City (the "System");

WHEREAS, on April 15, 2013, the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, in Case No. CV-13-338, issued its Judgment (the "Judicial Confirmation") ordering and decreeing, among other things, that the City has the authority to issue revenue bonds, without a public vote, to finance improvements to the City's System (the "Project");

WHEREAS, the City has received from the State of Idaho Department of Environmental Quality ("DEQ") that certain Loan Offer, Acceptance and Agreement for Wastewater Treatment Facility Design and Construction (the "Loan Offer") dated May 22, 2013, attached hereto as Exhibit A, providing for a loan from DEQ to the City in the principal amount of up to \$7,700,000, the proceeds of which are to be used by the City to finance a portion of the Project;

WHEREAS, the City desires to accept the Loan Offer and authorize the Mayor or the City's Finance Director to execute the Loan Offer, and deliver the same to DEQ together with all required documentation as itemized in the Loan Offer;

WHEREAS, the City desires to authorize the City's officials to take all action necessary or reasonably required to effectuate the Loan Offer provisions, including, as authorized by the Judicial Confirmation, to approve the substantial form of the bond to be issued to DEQ to evidence the loan in the principal amount up to \$7,700,000 (the "Revenue Bond") in the form attached hereto as Exhibit B.

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

Section 1. Approval of Loan Offer. The form, terms and provisions of the Loan Offer to be entered into, accepted, approved and/or acknowledged, as applicable, by the City be, and they are hereby, approved and authorized, and the Mayor or City Finance Director are hereby authorized to execute and deliver the Loan Offer.

Section 2. Approval of Form of Revenue Bond. The Revenue Bond in substantially the form attached hereto as Exhibit B is hereby approved, together with such changes as required at the time the City issues the Revenue Bond as shall be consistent with the Loan Offer.

Section 3. Delivery of Documents to DEQ. The officials of the City are authorized to deliver to DEQ the executed Loan Offer, together with a copy of this Resolution and form of Revenue Bond, together with all other required documentation required by the Loan Offer.

Section 4. Necessary Actions. The Mayor and other officers and agents of the City shall take all actions necessary or reasonably required by the Loan Offer to effectuate its provisions, and, upon completion of the Project, shall take all action necessary or desirable to authorize the issuance of the Revenue Bond to DEQ substantially in the form hereby approved.

CITY OF COEUR D'ALENE, IDAHO

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

ATTEST:

By \_\_\_\_\_  
Renata McLeod, Clerk

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

ROLL CALL:

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

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

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

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

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

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

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



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor  
Curt Fransen, Director

May 23, 2013

Certified mail no.: 7007 3020 0001 4049 8191

The Honorable Sandi Bloem  
Mayor of City of Coeur d'Alene  
710 E Mullan Avenue  
Coeur d'Alene, Idaho 83814

RE: Offer of Loan # WW1307

Dear Mayor Bloem:

I am pleased to inform you that your application for a loan in the amount of \$7,700,000 from the Clean Water State Revolving Fund has been accepted. The loan offer is enclosed. Please note that the enclosures include Davis Bacon wage provisions in Attachment B and C.

Attached is a set of wastewater system classification forms for your use in determining the future classification of your system. The updated system classification information is important and should be shared with your responsible charge operator and substitute responsible charge operator. Wastewater facility upgrades make it likely that the system classification will change or increase and that the associated responsible charge operator and substitute responsible charge operator licenses will also require upgrade. Should you have any questions regarding system classification, please contact Mike May at 208-373-0406.

Once this offer has been accepted by the City of Coeur d'Alene, please complete the project schedule (Attachment A) and sign the offer on page 11. A copy of the signed offer should be kept in the City's files. The loan offer, Attachment A, and the completed EPA Form 4700-4 should be returned to MaryAnna Peavey in this office at the address listed above, on or before 60 days from the date of this loan offer. Please pay close attention to the Special Conditions on page 6 of the loan offer. Please read and comply with Attachment B and C relating to compliance with Davis Bacon wage provisions. Recipients of federal aid have to establish a "DUNS" number (this is needed to complete the EPA Form 4700-4), please go to <http://fedgov.dnb.com/webform> to establish your Association's DUNS number. Please use your 9-digit zip code when setting up your "DUNS" number.

If you have any questions regarding this loan offer, please contact MaryAnna Peavey at 208-373-0122 or Katy Baker-Casile in our Coeur d'Alene Regional Office at 208-769-1422.

Sincerely,

A handwritten signature in blue ink that reads "Barry N. Burnell".

Barry N. Burnell  
Water Quality Division Administrator

BNB:MHP:dls

Enclosures (loan offer, Attachments A-C, EPA Form 4700-4, system classification information)

- c: Katy Baker-Casile, DEQ Coeur d'Alene Regional Office (w/o enclosures)  
Jim Remitz, City of Coeur d'Alene, ([jremitz@cdaid.org](mailto:jremitz@cdaid.org))  
Sid Fredrickson, Wastewater Superintendent, ([sidf@cdaid.org](mailto:sidf@cdaid.org))  
Bill Hart, DEQ State Office

**STATE OF IDAHO  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LOAN OFFER, ACCEPTANCE AND AGREEMENT  
FOR WASTEWATER TREATMENT FACILITY  
DESIGN AND CONSTRUCTION**

**SECTION I. INTRODUCTION**

The State of Idaho (State) is authorized by Title 39, Chapter 36 (Act), Idaho Code, to make loans from the Wastewater Treatment Facility Loan Account (Account) to assist municipalities in the construction of wastewater treatment facilities. The Idaho Board of Environmental Quality, through the Department of Environmental Quality (Department), is authorized to administer the Act. The Department has determined that the City of Coeur d'Alene (Applicant/Borrower) has established eligibility for a loan under the terms of the Act and IDAPA 58.01.12, the Idaho Rules for Administration of Water Pollution Control Loans (the Rules).

The Applicant is a public entity with the authority to finance public improvements. The Department hereby offers a loan to the Applicant according to the terms and conditions contained in this document and the Rules.

**SECTION II. DESCRIPTION OF PROJECT**

This loan offer is for design and construction of the following project:

- A. Loan Project Number: WW1307
- B. Name and Address of Applicant: City of Coeur d'Alene  
710 East Mullan Avenue  
Coeur d'Alene, Idaho 83814
- C. Project Description: This loan is for construction of a new membrane filtration equipment building; new mixing aeration, and membrane tanks; new secondary effluent transfer pumping station; modifications to secondary control building; modifications to chemical systems center, and installation of owner-purchased submerged membrane filtration system.
- D. Terms: \$7,700,000 at 2.00% (interest of 1.00% and loan fee of 1.00%) to be repaid in biannual installments over 20 years.
- E. Estimated Project Budget:

1.	Engineering Fees	1,243,098
2.	Construction	6,456,902
5.	Total	<u>\$ 7,700,000</u>

**SECTION III. GENERAL CONDITIONS**

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan agreement (Agreement) and the Applicant shall become a Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Rules:

The Borrower agrees:

- A. To not transfer, assign or pledge any beneficial interest in this Agreement to any other person or entity without the prior written consent of the Director of the Department of Environmental Quality (Director). To not enter into sale, lease or transfer of any of the property related to the Agreement. To not make any additional material encumbrances to the project without the prior written consent of the Director. To not incur any additional liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director. To not delegate legal responsibility for complying with the terms, conditions, and obligations of this Agreement without the prior written consent of the Director. Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director.
- B To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this Agreement.
- C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department by the Borrower in support of the request for this loan. Which application is attached hereto and incorporated by reference herein.
- D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.
- E. To make efforts to award subagreements to Disadvantaged Business Enterprises (DBE) which includes Minority and Women-owned businesses (MBE/WBE).
  - a. The separate fair share goals for MBE and for WBE, will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any

- contractor who fails to attain the goals; and,
- b. Semi-annual reports of MBE/WBE utilization will be prepared on forms supplied by the Department; and,
  - c. Include the following language in all procurement contracts *“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”*
- F. To provide evidence of ownership in the form of fee simple title or long-term lease and right of access or easements for real property on which the project is proposed to be constructed. Clear title or legal right to all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project, prior to commencement of construction. Land acquisitions shall only be reimbursed by DEQ if obtained from a willing seller.
- G. That if prior to completion of this Agreement the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- H. That in the event there is any default in the payment of either the principal amount, loan fee or the interest due under this Agreement, or any breach by the Borrower of any of the terms or conditions of this Agreement, the entire principal amount and whatever interest and fees are due to the date of payment may be declared due and immediately payable. The procedure for events of default and remedies by the Borrower are set forth in the Borrower’s Wastewater Bond Ordinance No. 3453, adopted November 29, 2012, as supplemented. The amount of such default shall bear the same interest and fee rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- I. That any waiver by the Department at any time of the rights or duties under this Agreement shall not be deemed a waiver of any subsequent or additional rights or duties under this Agreement.
- J. That the use by the Department of any remedy specified in this Agreement for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- K. That this Agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.
- L. To comply with all applicable federal, state and local laws.
- M. In the event any term of this Agreement is held to be invalid or unenforceable by a

court, the remaining terms of this Agreement will remain in force.

- N. The total loan funds disbursed per this Agreement are considered federal financial assistance per the Single Audit Act of 1984, as amended by the Single Audit Act Amendments of 1996 (SAA), 31 U.S.C. §§7501-7507. (2000). If Borrower expends more than \$500,000 of any federal funds in a fiscal year, Borrower shall conduct an audit in accordance with the SAA. In such case, Borrower shall provide the Department a copy of the SAA audit within nine (9) months of the end of the audit period per the SAA. Borrower recognizes that it is responsible for determining if the \$500,000 threshold is reached and if a SAA audit is required. Additionally, Borrower shall inform the Department, in writing, of findings or recommendations pertaining to the State Revolving Fund contained in any SAA audits conducted by Borrower.
- O. As per Executive Order 12549, 2 CFR 180 and 2 CFR 1532 the loan recipient agrees to not enter into covered transactions with any contractors or subcontractors that have been suspended or debarred, and to include a similar term or condition in all lower tier covered contracts and transactions.

#### **SECTION IV. PROJECT MANAGEMENT**

The Borrower agrees to:

- A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability indemnification to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability indemnification shall be at least one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability indemnification must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.
- B. Comply with the Public Works Contractors License Act and the Public Contracts Bond Act, Title 54, Chapter 19, Idaho Code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.
- C. Assure that contracts related to the project which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.
- D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.

- E. Provide for the accumulation of funds through charges made for services or otherwise, for the purposes of establishing a fund dedicated solely to (1) the repayment of principal, interest and loan fee on this loan, (2) capital replacement and (3) a reserve account as required by the Terms of the loan agreement, and (4) future improvements.
- F. Provide a plan and program for an equitable user charge system for payment of operation and maintenance of constructed facilities. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment.
- G. Review and update the user charge system at least biennially during the life of this Agreement to assure that all costs including applicable debt retirement, operation and maintenance are offset by sufficient revenues.
- H. Develop and adopt a sewer use ordinance prior to receiving final payment of State loan funds.
- I. Provide an operation and maintenance manual for the system approved by the Department prior to receiving final payment of State loan funds.
- J. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- K. Assure that the operator in charge of the treatment facility has a licensure commensurate with the nature of the collection and treatment facility per the Wastewater Rules, IDAPA 58.01.16.
- L. Assure that facility personnel shall participate in operator training programs approved by the Department and designed to assure competence in the operation and maintenance of the facility.
- M. Commence satisfactory operation and maintenance of the sewage treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the treatment facility without the written approval of the Department.
- N. Provide for continuing acceptance and treatment of local septage waste, if such facilities were constructed under this Agreement.
- O. Maintain project accounts in accordance with generally accepted accounting principles.
- P. Certify whether or not the project is performing in accordance with the design performance standards after the project has been in operation for one year. If the project cannot meet these standards, the Borrower must submit a corrective action report and a

schedule for bringing the project into compliance to the Department.

- Q. All laborers and mechanics employed by the prime construction contractor and subcontractors in the project using State Revolving Fund (SRF) loans shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality in accordance with the labor standards, including prevailing wage rates and instructions for reporting, as established by the United States Department of Labor (subchapter IV of Chapter 31 of title 40, United States Code). Borrower agrees that all procurement contracts must include as a term and condition that contractors and subcontractors must obtain wage determinations from the Department of Labor and comply with Department of Labor guidance and regulations implementing wage rate requirements applicable to SRF funds. Wage determinations shall be finalized prior to final bid submissions. Specific requirements related to Davis Bacon compliance are included in Attachment B to this loan agreement.

## **SECTION V. SPECIAL CONDITIONS**

- A. The Borrower shall complete the attached project schedule and submit to the Department for approval on or before 60 days from the date of this loan offer. No funds shall be disbursed per this Agreement until a project schedule has been approved by the Department. The Department approved project schedule shall be attached to this Agreement as Attachment A and incorporated by reference as if fully set forth herein. The Borrower shall complete the project in accordance with the approved project schedule.
- B. All amendments to the project schedule must be approved by the project engineer in the Department's Coeur d'Alene regional office, prior to becoming effective.
- C. Prior to any loan disbursements the Borrower must confirm they have the authority to incur debt with the approval of the judicial confirmation.
- D. Manage direct and indirect environmental impacts from the project that are specified in the environmental determination.
- E. Prior to loan closure, the City must develop for DEQ review a Safety &/or Risk Management Plan and Customer Service Policy.
- F. If your community receives \$500,000 or more in Federal monies, in any single fiscal year, during the period under which you are receiving loan disbursements, than you must submit a Single Audit Act audit report to DEQ (for each and every year the threshold is met).
- G. A technical memorandum shall be developed and submitted during the detailed design phase for each Green Project Reserve (GPR) component identified in the Letter of Interest. The memorandum shall fully detail the GPR justification according to the current EPA guidance for determining project eligibility and comparable to the examples provided on the Department's website. Please review the following URLs for guidance (*current as of 05/15/2013*):

1. [http://kia.ky.gov/NR/rdonlyres/08C6B5D5-BD95-4DC7-A579-9CAA7AEAA7AB/0/EPA\\_GPR\\_Guidance\\_May2011.pdf](http://kia.ky.gov/NR/rdonlyres/08C6B5D5-BD95-4DC7-A579-9CAA7AEAA7AB/0/EPA_GPR_Guidance_May2011.pdf)
2. [http://water.epa.gov/grants\\_funding/dwsrf/upload/dwsrf\\_gpr\\_business\\_case\\_examples\\_508\\_compliant.pdf](http://water.epa.gov/grants_funding/dwsrf/upload/dwsrf_gpr_business_case_examples_508_compliant.pdf)
3. <http://www.deq.idaho.gov/water-quality/grants-loans/green-project-reserve.aspx>

## **SECTION VI. SECURITY REQUIREMENTS**

The Borrower agrees:

- A. This loan will be evidenced and secured by a promissory note or bond in the amount of \$7,700,000 (seven million seven hundred thousand dollars). The promissory note or bond will be issued upon project completion and incorporated by reference into this Agreement.
- B. There will be a reserve fund equal to one year's payment of principal, fees and interest on the loan established. The Borrower has ten years to establish the reserve, setting aside 10% (ten percent) of one year's payment into the reserve fund each year.

## **SECTION VII. LOAN DISBURSEMENTS**

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower's project described in Section II.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loans funds shall be released to the Borrower.
- C. The costs set forth in Section II have been determined by the Department to be eligible costs for funding. Some of the costs however, have been estimated, and the actual costs may differ from such estimated costs. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.
- E. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling.

- F. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department, (b) an operations manual has been completed and (c) that the project is fully operational; and
  2. The Department has inspected the project and verifies the engineer's certification.
- G. Payment of the final ten percent (10%) of this loan shall be withheld until the following requirements are met:
1. The Special Conditions in Section V have been met; and
  2. A responsible charge operator (RCO) has been designated who is licensed at or above the classification level of the system. At such times as the RCO is not available, a substitute RCO shall be designated to replace the RCO, who is licensed at or above the classification level of the system.
- H. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Borrower the offered sum of money on the basis of the Borrower's priority position immediately upon the accrual of said sum in the Account.

## **SECTION VIII. REPAYMENT TERMS AND SCHEDULE**

The Borrower agrees:

- A. This loan shall be repaid in the manner set forth in the promissory note or bond, which shall be attached to this Agreement and incorporated by reference.
- B. To pay biannual payments of principal, fees and interest and to fully amortize this loan not later than twenty (20) years from project completion. Interest will begin accruing with the first disbursement of funds. At the time of closing, accrued interest will be either paid to the Department or incorporated into the final loan amount if the approved amount has not been exceeded.
- C. At the time of closing, the Department may elect to impose a loan fee (not to exceed 1%) pursuant to the Rules. If a loan fee is imposed, the loan interest rate will be reduced by the amount of the loan fee. The loan fee will be assessed against the final loan balance, which shall include the entire principal balance and may include capitalized interest. Any loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period.

- D. This Agreement shall remain in full force and effect until all loan proceeds, including principal, interest and loan fee, have been paid in full or the Agreement is otherwise suspended or terminated by the Department.

### **SECTION IX. PROHIBITIONS**

The Borrower agrees:

Expansion of collection systems in excess of reserve capacity of the treatment works will be prohibited unless prior to expansion, provisions for adequate treatment are provided in writing by the Borrower to the Department and approved by the Department.

### **SECTION X. SUSPENSION OR TERMINATION OF LOAN AGREEMENT**

- A. The Director may suspend or terminate this Agreement prior to final disbursement for failure of the loan recipient or its agents, including engineering firm(s), contractor(s), or subcontractor(s) to perform. This Agreement may be suspended or terminated for good cause including, but not limited to, the following:
1. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any form of tortious conduct; or
  2. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or
  3. Violation(s) of any term of this Agreement; or
  4. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or
  5. Utilizing a contractor or subcontractor who has been suspended or debarred by order of any federal or state agency from working on public work projects funded by that agency.
- B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this Agreement. The notice of intent shall state:
1. Specific acts or omissions which form the basis for suspension or termination;
- and
2. Availability of a contested case hearing before the Board of Environmental Quality conducted as provided for in the Rules of Administrative Procedure

Before the Board of Environmental Quality, IDAPA 58.01.23.

- C. If the Borrower does not initiate a contested case hearing before the Board by filing a petition within the time period specified by the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23., the Department may thereafter terminate or suspend the Agreement by written notice to the Borrower. If the Borrower initiates a contested case, the termination or suspension shall be determined by the Board.
- D. The Borrower shall perform no work under the Agreement after receiving a notice of intent to suspend or terminate until all administrative proceedings and appeals therefrom are final or the Department reinstates the Agreement as provided herein.
- E. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the Agreement. If a suspended Agreement is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.
- F. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this Agreement.

#### **SECTION XI. ACCESS AND INDEMNIFICATION**

The Borrower agrees to:

- A. Provide the Director, or his/her authorized agents, and the U.S. Environmental Protection Agency, access to all files, records, accountings and books relating to the management and accountability of this loan.
- B. Indemnify and hold harmless the State of Idaho, its agents and its employees from any and all claims, actions, damages, liabilities and expenses directly or indirectly connected to the Borrower or its agents, employees, contractors, or assignees actions related to the location, design, construction, operation, maintenance, repair, failure or deactivation of the project or any part of the project.

**SECTION XII. OFFER**

The offer set forth herein must be accepted, if at all, on or before 60 days from the date of this loan offer. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated May \_\_\_\_, 2013.

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Curt A. Fransen  
Director  
Department of Environmental Quality

**SECTION XIII. ACCEPTANCE**

The City of Coeur d'Alene, by and through its undersigned representative(s), accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.

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Signature of Representative

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Name and Title of Representative - type or print

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Date

LOAN AGREEMENT BETWEEN THE STATE OF IDAHO  
DEPARTMENT OF ENVIRONMENTAL QUALITY AND  
CITY OF COEUR D'ALENE  
LOAN PROJECT NUMBER: WW1307  
PROJECT SCHEDULE

Pursuant to Section V, Special Conditions of the loan agreement (Agreement) between the State of Idaho, Department of Environmental Quality (Department) and the City of Coeur d'Alene (Borrower), Loan Project Number WW1307: This loan is for construction of a new membrane filtration equipment building; new mixing aeration, and membrane tanks; new secondary effluent transfer pumping station; modifications to secondary control building; modifications to chemical systems center, and installation of owner-purchased submerged membrane filtration system. The Borrower agrees to complete the project in accordance with the following schedule:

Number of Months from Loan Acceptance	Task
_____	10% Design Review
_____	50% Design Review
_____	90% Design Review
_____	Final Plans, Specifications and Bidding Documents
_____	Bid Summary
_____	Award Construction Contract
_____	Project Management Conference.
_____	Plan of Operation Amendment
_____	Draft Operation & Maintenance (O&M) Manual
_____	Staffing Plan
_____	Construction Completion
_____	User Charge System Enacted
_____	Sewer Use Ordinance Enacted
_____	Final O&M Manual
_____	Final Inspection
_____	Review of Updated Wastewater System Classification Forms
_____	Verify Appropriate Operator Licensure
_____	Initiate Operation
_____	Final Payment

Project schedule approved by:

\_\_\_\_\_  
Signature of Borrower Representative

\_\_\_\_\_  
Signature of Department Representative

\_\_\_\_\_  
Printed Name of Borrower Representative

\_\_\_\_\_  
Printed Name of Department Representative

\_\_\_\_\_  
Date of Approval

\_\_\_\_\_  
Date of Approval

## **Attachment B - Davis Bacon Contract Provisions for Governmental Entities**

### Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of the Department of Labor (DOL) under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of the DOL which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis Bacon (DB) Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (ii) of this section) and the DB poster (<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The loan recipient, on behalf of U.S. Environmental Protection Agency (EPA), shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Idaho Department of Environmental Quality (DEQ) shall review and act upon a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the loan recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the loan recipient to DEQ. DEQ will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, DOL, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise DEQ or will notify DEQ within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the loan recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), DEQ shall refer the request and the local wage determination, including the views of all interested parties and their recommendation to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iii) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of DOL has found, upon the written request of the contractor, that the applicable standards of the DB Act have been met. The Secretary of DOL may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### Withholding

The loan recipient, shall upon written request of the EPA Award Official or an authorized representative of the DOL, withhold or cause to be withheld from the

contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DB prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, DEQ may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

#### Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the DB Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of DOL has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the DB Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the loan recipient, that is, the entity that receives the loan from DEQ. Such documentation shall be available on request of DEQ or EPA. As to each payroll copy received, the loan recipient shall provide written confirmation in a form satisfactory to DEQ indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for

each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to DEQ or EPA if requested by EPA, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the loan recipient.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (ii)(B) of this section.

(C) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (i) of this section available for inspection, copying, or transcription by authorized representatives of DEQ, EPA or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor

fails to submit the required records or to make them available, the EPA or DEQ may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(A) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval,

evidenced by formal certification by the DOL, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the DOL Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the DOL Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(C) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(1) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(3) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(4) Compliance with DB and Related Act requirements. All rulings and interpretations of the DB and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(5) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the DOL set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and loan recipient, DEQ, EPA, DOL, or the employees or their representatives.

#### Certification of eligibility

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the DB Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### Contract Provision for Contracts in Excess of \$100,000

(i) Contract Work Hours and Safety Standards Act. The loan recipient shall insert the following clauses set forth in paragraphs (i)(A), (B), (C), and (D) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(A) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(B) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i)(A) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards,

employed in violation of the clause set forth in paragraph (i)(A) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i)(A) of this section.

(C) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the DOL, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

(D) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (i)(A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (i)(A) through (D) of this section.

(ii) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the loan recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the loan recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the DOL, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

#### Compliance Verification

(i) The loan recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from

<http://www.gsa.gov/portal/forms/download/12BF5D0E2DC4484685256CBC0062F375>.

(ii) The loan recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the loan recipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Loan recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Loan recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(iii) The loan recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The loan recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the loan recipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Loan recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the loan recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(iv) The loan recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the DOL or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item (ii) and (iii) above.

(v) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA D B contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>

## Attachment C

### **Davis Bacon Compliance Requirements for Borrowers**

*Compliance with this Attachment to the Loan Offer will be monitored as part of the DEQ Project Officer's disbursement approval process, and during interim and final inspections.*

#### 1. Request Additional "Trade" Classifications and Wage Rates

If the work classification(s) needed does not appear on a federal wage decision, borrowers will need to request an additional classification and wage rate. It is recommended the process be started early during the preconstruction conference. The borrower and prime contractor for the project should identify the classification needed and recommend a wage rate through the Department of Environmental Quality (DEQ).

Requests can be approved if:

- The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision, another Electrician classification and rate cannot be requested.)
- The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- If the contractor and laborers and mechanics to be employed in the classification (if known), and the borrower agree on the classification and wage rate (including fringe where appropriate).

Requests must be made in writing through the borrower, including a completed Conformance Request SF 1444 Form (Attachment 8-A). The request should identify the work classification that is missing and recommend a wage rate for the classification. Also include any pertinent documents that may be helpful (if requesting paying the state prevailing wage rate, include the state wage decision). Send the packet to DEQ for review and submission to the U.S. Department of Labor (DOL) for approval. DOL's response will be forwarded to the borrower.

If the request is denied, the borrower will be notified what classification and rate should be used. Requesting additional classification does not hold up the payroll process. It may however result in correcting underpayments if DOL is not in agreement with the request.

#### 2. Conduct Payroll Reviews

The Federal Copeland Act requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions such as payroll taxes, deductions the worker authorizes in writing, or those provided by court order. The Act also requires contractors to maintain payroll records and submit weekly certified payroll and statement of compliance to the borrower certifying wages paid and deductions made. The appropriate wage rates are those determined pursuant to the federal Davis-Bacon related acts by the Federal Department of Labor. Further, if the rate is not shown in the Davis-Bacon related acts, an additional classification must be obtained from the U.S. Department of Labor through DEQ.

- Borrowers must also review payrolls to determine if workers on the construction project have received appropriate rates of overtime compensation. The Contract Work Hours and Safety Act requires that laborers and mechanics receive overtime compensation at a rate of not less than one and one-half times their regular hourly wage after they have worked 40 hours in one week on DWSRF funded projects.

Weekly payroll records must be reviewed by the borrower for the following:

- Payrolls were submitted on time
- Forms were filled out completely including on the initial payroll, the name, identifying number, address, and job classification for each employee.
- All self-employed owners, who have no employees, are designated as an employee and are reported on the certified payroll of the General contractor (or subcontractor if hired by them). Fill out the form the same as for employees and enter “self-employed” and contracting license number where the payroll asks for deductions.
- If the owner of the company has employees and performs work on the project covered by Davis-Bacon wage decisions, the owner is listed as an employee on the certified payroll he submits for his employees. Fill out the form the same as for employees and enter “self-employed, owner or owner/operator”.
- The wages and fringes listed on the certified payroll for each job classification agree with those identified on the statement of intent to pay prevailing wages.
- The payrolls include all the classifications being utilized even if not listed on the statement of intent to pay prevailing wages.
- Payrolls only include permissible deductions.
- When fringe benefits are being paid into a benefit plan, block 4(a) on the back of the certified payroll form must be checked.
- Apprentices or trainees listed on the certified payroll are working under approved apprenticeship and training agreements. Copies of those certifications should be included with payrolls.
- The payroll form is signed.

### 3. Conduct On-Site Reviews

The borrower, or its representative, must provide for visits to the construction site to determine that:

- Wage determinations are posted at the job site.
- Employees are working within the proper job classification.

### 4. Conduct Employee Interviews

The borrower or its representative (not the prime contractor, or subcontractors) must conduct employee interviews with at least one employee in each trade to determine the following:

- Employees are being paid the amounts/rates stated on the payrolls
- Employees are being properly compensated for overtime hours
- Employees are receiving their full wages and fringe benefits and are not being subjected to coercion or kickback tactics by the contractor or subcontractors.

- Contractors and subcontractors are using and paying apprentices and trainees appropriately.

5. Submit First Week Labor Standards (21 Day Labor Packet)

For each prime and subcontractor performing work on-site during the first week of construction, the borrower must provide a copy of the following documents to the DEQ regional office in charge of day-to-day project oversight, within 21 days after the contractors start construction on the project.

- Certified Payroll for the first week pay period
- Employee interview forms for the first week

The purpose for submitting the above information to DEQ is to assure that any underpayments are detected early and appropriate corrections made early while easy to implement. **The first week labor standards (21 day) packet must be provided to DEQ and any underpayments resolved before DEQ will pay the construction reimbursement request. If underpayments are discovered, DEQ will notify the borrower to work with the prime contractor to have restitution made and a corrected certified payroll submitted to DEQ for approval.**

6. Resolve Overtime Violations

If the prime contractor or subcontractors do not compensate a worker appropriately for overtime, the borrower needs to notify DEQ and work with the prime contractor to resolve the overtime violations.

- If the violation is less than \$10 per worker, the violation does not have to be reported.
- If the violation is \$10 or more per worker, the prime contractor must make payment or assure payments are made by subcontractors and submit a corrected certified payroll and a copy of the check to the worker, and send it to the borrower. Any time the violation is \$10 to \$999, the borrower must notify DEQ in writing. If the violation is \$1,000 or more, the borrower must submit a Labor Standards Enforcement Report to DEQ who will coordinate the violation with the Department of Labor or EPA (contact DEQ for assistance in filing this report).

7. Resolve Other Underpayments

If a mathematical error, misclassifications, or other error that results in the underpayment of wage or fringe benefits occurs, the prime contractor or subcontractor must make restitution and submit a corrected certified payroll and a copy of the check showing the underpayment made to the worker, to the borrower.

8. Conduct Technical Inspections

During construction, the borrower is responsible for monitoring contractor/subcontractor progress and compliance with technical requirements of the project. Typically, this monitoring process is the responsibility of the consulting project engineer; however, the borrower may wish to designate someone locally with oversight responsibility. The purpose of the technical monitoring process is to ensure that the project is constructed as planned, within budget and estimated timeframes, and within specified quality and quantity standards.

9. Maintain Project Records

The borrower is required to maintain project records that document all financial, monitoring and inspection transactions, and progress reviews that occur during the life of the project. Borrowers must maintain copies of weekly certified payrolls and any corrected certified payrolls, copies of correspondence and resolution of overtime violations, and copies of employee interviews in the project files for the life of the loan as defined by the contract.

**Preaward Compliance Review Report for  
All Applicants and Recipients Requesting EPA Financial Assistance**

**Note: Read instructions on other side before completing form.**

I. Applicant/Recipient (Name, Address, State, Zip Code).	<b>DUNS No.</b>	
II. Is the applicant currently receiving EPA assistance?		
III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
IV. List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)		
V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))		
VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below. <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <span>Yes</span> <span>No</span> </div> a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). <span style="float: right;">Yes      No</span> b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies. <span style="float: right;">Yes      No</span>		
VII.* Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95) <span style="float: right;">Yes      No</span> a. Do the methods of notice accommodate those with impaired vision or hearing? <span style="float: right;">Yes      No</span> b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? <span style="float: right;">Yes      No</span> c. Does the notice identify a designated civil rights coordinator? <span style="float: right;">Yes      No</span>		
VIII.* Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))		
IX.* Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)		
X.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator.		
XI.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures.		
<b>For the Applicant/Recipient</b>		
I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized Official	B. Title of Authorized Official	C. Date
<b>For the U.S. Environmental Protection Agency</b>		
I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.		
A. Signature of Authorized EPA Official	B. Title of Authorized EPA Official	C. Date
See ** note on reverse side		

## Instructions for EPA FORM 4700-4 (Rev. 04/2009)

### General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).

Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities.

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities.

The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission.

Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973.

The Executive Order 13166 (E.O. 13166) entitled; "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

### Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed.

"Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability.

Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission.

If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable."

In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification.

\* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7).

\*\* Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form.

Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

### "Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.



# IDAHO PUBLIC WASTEWATER TREATMENT PLANT CLASSIFICATION WORKSHEET

<b>OFFICE USE DO NOT WRITE HERE</b>
System Class _____
Upgrade ___ STD 5 Yr ___
Approved by _____
Date _____

Name of System: \_\_\_\_\_

Legal Owner of Treatment System \_\_\_\_\_

System Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Business Phone Number: (\_\_\_\_) \_\_\_\_\_ Email \_\_\_\_\_

Treatment System - Design Flow/Actual Flow \_\_\_\_/\_\_\_\_  
(MGD) (MGD)

Treatment Plant Classification Worksheet is (Check one):

- Initial System Rating   
  System Upgrade   
  Standard 5 Year Rating  
 Date of last system classification rating (if applicable) \_\_\_\_\_

**Attach a flow schematic or hydraulic flow diagram of the treatment facility to this treatment plant classification worksheet when submitting to DEQ.**

**Instructions:**

Use this rating form for all types of public wastewater treatment plants, facilities, or systems<sup>D-16</sup> that treat domestic and/or industrial wastewater including, but not limited to traditional biological and mechanical treatment processes, large soil absorption systems, community drainfields, and wastewater lagoon systems. **Fill out ONE form for the wastewater treatment facility including all sequential, parallel or multiple treatment processes for both effluent and solids that provide treatment of all wastewater introduced into the system.**

**How to Assign Points:**

Evaluate each item listed in the table below and place the specified point value next to each item selected. *Each unit process should have points assigned only once*. Add the total number of points selected to determine the class of the treatment system. Definitions describing all configurations, names, and/or reasons why rating points are or are not assigned to a particular item are provided for those items with a small D-number behind the item, i.e. D-1. Check the definition if unsure whether a particular treatment plant process qualifies for the point value shown.

Treatment facilities will be classified as VSWW, Class I, Class II, Class III or Class IV with IV being the largest and most complex. *Mail the completed, signed form to the Department of Environmental Quality 1410 N. Hilton, Boise, ID 83706 Attention: Mike May. Keep a photocopy of the original form for your files.*

Item	Points	Your System
<i>System Size (2 to 20 points)</i>		
Number of Connections (for information only)	(not scored)	
Maximum population served, peak day (1 point minimum to 10 point maximum)	1 point/10,000 or part	

Item	Points	Your System
Design flow (average/day) or peak months (average/day) Whichever is larger (1 point min to 10 point max)	1 point/MGD or part	
<b>Variation in Raw Waste (0 to 6 points)<sup>1</sup></b>		
Variations do not exceed those normally or typically expected	0 points	
Recurring deviations/excessive variations of 100% to 200% in strength/flow	2 points	
Recurring deviations/excessive variations of more than 200% in strength/flow	4 points	
Raw wastes subject to toxic waste discharges	6 points	
Impact of septage of truck-hauled waste (0 to 4 points)	0-4 points	
<b>Preliminary Treatment Process</b>		
Plant pumping of main flow	3 points	
Screening, comminution	3 points	
Grit removal	3 points	
Equalization	1 point	
<b>Primary Treatment Process</b>		
Primary clarifiers	5 points	
Imhoff tanks, septic tanks, or similar (combined sedimentation/digestion) <sup>D-8</sup>	5 points	
<b>Secondary Treatment Process</b>		
Fixed-film reactor <sup>D-7</sup>	10 points	
Activated sludge <sup>D-1</sup>	15 points	
Stabilization ponds or lagoon without aeration	5 points	
Stabilization ponds or lagoon with aeration	8 points	
Membrane Biological Reactor (MBR) – Basic MBR which combines activated sludge (minus secondary clarification) and membrane filtration. <sup>D-17</sup>	15 points	
<b>Tertiary Treatment Process</b>		
Polishing ponds for advanced waste treatment	2 points	
Chemical/physical advanced waste treatment w/o secondary <sup>D-5</sup>	15 points	
Chemical/physical advanced waste treatment following secondary <sup>D-4</sup>	10 points	
Biological or chemical/biological advanced waste treatment <sup>D-2</sup>	12 points	
Nitrification by designed extended aeration only	2 points	
Ion exchange for advanced waste treatment	10 points	
Reverse osmosis, electrodialysis and other membrane filtration techniques for advanced waste treatment	15 points	
Advanced waste treatment chemical recovery, carbon regeneration	4 points	
Media filtration (removal of solids by sand or other media) <sup>D-13</sup>	5 points	
<b>Additional Treatment Processes</b>		
Chemical additions (2 points each for a max of 6 points) <sup>D-3</sup>	0-6 points	
Dissolved air floatation (for other than sludge thickening)	8 points	
Intermittent sand filter	2 points	
Recirculating intermittent sand filter	3 points	
Microscreens	5 points	
Generation of oxygen	5 points	
<b>Solids Handling</b>		
Solids stabilization (used to reduce pathogens, volatile organic chemicals &		

Item	Points	Your System
odors include lime or similar treatment and thermal conditioning) <sup>D-15</sup>	5 points	
Gravity thickening	2 points	
Mechanical dewatering of solids <sup>D-11</sup>	8 points	
Anaerobic digestion of solids	10 points	
Aerobic digestion of solids	6 points	
Evaporative sludge drying	2 points	
Solids reduction (including incineration, wet oxidation)	12 points	
On-site landfill for solids	2 points	
Solids composting <sup>D-14</sup>	10 points	
Land application of biosolids by contractor <sup>D-9</sup>	2 points	
Land application of biosolids by facility operator in responsible charge	10 points	
<b><i>Disinfection (0 to 10 points maximum)</i></b>		
No disinfection	0 points	
Chlorination (including chlorine dioxide or chloramines) or ultraviolet irradiation	5 points	
Ozonation	10 points	
<b><i>Effluent Discharge (0 to 10 points maximum)</i></b>		
No discharge	0 points	
Discharge to surface water receiving stream <sup>D-6</sup>	0 points	
Mechanical post aeration <sup>D-12</sup>	2 points	
Land treatment with surface disposal or land treatment with subsurface disposal <sup>D-10</sup>	4 points	
Direct recycle and reuse	6 points	
<b><i>Instrumentation (0 to 6 point maximum)</i></b>		
SCADA or similar instrumentation systems to provide data with no process operation	0 points	
SCADA or similar instrumentation systems to provide data with limited process operation	2 points	
SCADA or similar instrumentation systems to provide data with moderate process operation	4 points	
SCADA or similar instrumentation systems to provide data with extensive or total process operation	6 points	
<b><i>Laboratory Control (0 to 15 point maximum)<sup>2</sup></i></b>		
<b><i>Bacteriological/Biological Laboratory Control (0 to 5 point maximum)</i></b>		
Lab work done outside the treatment plant	0 points	
Membrane filter procedures	3 points	
Use of fermentation tubes or any dilution method; fecal coliform determination	5 points	
<b><i>Chemical/Physical Laboratory Control (0 to 10 point maximum)</i></b>		
Lab work done outside the treatment plant	0 points	
Push-button or visual (colorimetric) methods for simple tests such as pH, settleable solids	3 points	
Additional procedures such as DO, COD, BOD, gas analysis, titrations, solids, volatile content	5 points	
More advanced determinations such as specific constituents; nutrients, total		

Item	Points	Your System
oils, phenols	7 points	
Highly sophisticated instrumentation such as atomic absorption, gas chromatography	10 points	
<b>TOTAL POINTS FOR YOUR SYSTEM</b>		
<b>System Classification Key</b>		
VSWWS**	Class II	31 to 55 points
Class I	30 points or less	Class III
		56 to 75 points
	Class IV	76 points or greater
<b>YOUR SYSTEM CLASSIFICATION</b>		<b>VSWWS, I, II, III, IV (Circle one)</b>

Footnote <sup>1</sup> The key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation can be in terms of strength, toxicity, shock loads, I/I, with points from 0-6.

Footnote <sup>2</sup> The key concept is to credit laboratory analyses done on-site by plant personnel under the direction of the operator in direct responsible charge with points from 0-15.

\*\*The Very Small Wastewater System Classification is applicable to a system comprised of one of the following wastewater treatment processes: aerated lagoon (s); non-aerated lagoon(s); primary treatment; or LSAS.

\_\_\_\_\_  
Signature of Legal Owner or Owner's Representative

\_\_\_\_\_  
Date

### Wastewater Treatment Definitions

- D-1. **Activated Sludge** - Wastewater treatment by aeration of suspended organisms followed by secondary clarification, including extended aeration, oxidation ditches, Intermittent Cycle Extended Aeration system (ICEAS), and other similar processes. A sequencing batch reactor with the purpose of providing this form of treatment would be rated under this category.
- D-2. **Biological or chemical/biological advanced waste treatment** - The advanced treatment of wastewater for nutrient removal including nitrification, denitrification, or phosphorus removal utilizing biological or chemical processes or a combination. If the facility is designed to nitrify based solely on detention time in an extended aeration system, only the points for nitrification by designed extended aeration should be given.
- D-3. **Chemical addition** - The addition of a chemical to wastewater at an application point for the purposes of adjusting pH or alkalinity, improving solids removal, dechlorinating, removing odors, providing nutrients, or otherwise enhancing treatment, excluding chlorination for disinfection of effluent and the addition of enzymes or any process included in the Tertiary Chemical/Physical Processes. The capability to add a chemical at different application points for the same purpose should be rated as one application; the capability to add a chemical(s) to dual units should be rated as one application; and the capability to add a chemical at different application points for different purposes should be rated as separate applications.
- D-4. **Chemical/physical advanced treatment following secondary** - The use of chemical or physical advanced treatment processes following (or in conjunction with) a secondary treatment process. This would include processes such as carbon adsorption, air stripping, chemical coagulation, and precipitation, etc.
- D-5. **Chemical/physical advanced treatment without secondary** - The use of chemical or physical advanced treatment processes without the use of a secondary treatment process. This would include processes such as carbon adsorption, air stripping, chemical coagulation, precipitation, etc.
- D-6. **Discharge to Receiving Water** - Treatment processes present at the facility are designed to achieve NPDES permit limitations that have already factored in the sensitivity of the receiving stream. Consequently, no additional points are assigned to rate the receiving stream separately from the facility treatment processes.

- D-7. **Fixed-film reactor** - Biofiltration by trickling filters or rotating biological contactors followed by secondary clarification.
- D-8. **Imhoff tanks (or similar)** - Imhoff tanks, septic tanks, spirogester, clarigester, or other single unit for combined sedimentation and digestion.
- D-9. **Land application of biosolids by contractor** - The land application or beneficial reuse of biosolids by a contractor outside of the control of the operator in direct responsible charge of the wastewater treatment facility.
- D-10. **Land treatment and disposal (surface or subsurface)** - The ultimate treatment and disposal of the effluent onto the surface of the ground by rapid infiltration or rotary distributor or by spray irrigation. Subsurface treatment and disposal would be accomplished by infiltration gallery, injection, or gravity or pressurized drain field.
- D-11. **Mechanical dewatering** - The removal of water from sludge by any of the following processes and including the addition of polymers in any of the following: vacuum filtration; frame, belt, or plate filter presses; centrifuge; or dissolved air floatation.
- D-12. **Mechanical post-aeration** - The introduction of air into the effluent by mechanical means such as diffused or mechanical aeration. Cascade aeration would not be assigned points.
- D-13. **Media Filtration** - The advanced treatment of wastewater for removal of solids by sand or other media or mixed media filtration.
- D-14. **Solids composting** - The biological decomposition process producing carbon dioxide, water, and heat. Typical methods are windrow, forced air-static pile, and mechanical.
- D--15. **Solids stabilization** - The processes to oxidize or reduce the organic matter in the sludge to a more stable form. These processes reduce pathogens or reduce the volatile organic chemicals and thereby reduce the potential for odor. These processes would include lime (or similar) treatment and thermal conditioning. Other stabilization processes such as aerobic or anaerobic digestion and composting are listed individually.
- D-16 **Wastewater Treatment Facility.** Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment facility may also be known as a treatment system, waste treatment system, waste treatment facility, or waste treatment plant (IDAPA 58.01.16.010).
- D-17 **Membrane Biological Reactor (MBR) Point Factoring** - The points assigned to the basic MBR unit does not include points for any additional treatment processes such as phosphorus removal, nitrification, denitrification, land application, rapid infiltration basins, lagoons, etc. Points must be assigned separately to each additional treatment process beyond the basic MBR unit. Additional treatment processes may vary on a case-by-case basis.



# IDAHO PUBLIC WASTEWATER COLLECTION SYSTEM CLASSIFICATION WORKSHEET

**OFFICE USE ONLY  
DON'T WRITE HERE**

System Class \_\_\_\_\_

Approved by: \_\_\_\_\_

Date: \_\_\_\_\_

Name of System: \_\_\_\_\_

Legal Owner of Treatment System: \_\_\_\_\_

System Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Business Phone Number: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Collection System Classification Worksheet is (check one):

- Initial System Rating   
  System Upgrade   
  Standard 5 yr Rating

Date of last system classification rating (if applicable) \_\_\_\_\_

Collection System - Design Flow /Actual Flow \_\_\_\_\_ / \_\_\_\_\_

Item	Points	Your System
<i>System Size (Minimum 3 points)</i>		
Miles of Line	1 point/10 miles or part	
Number of Connections = _____ (Use Connection Equivalencies)	1 point /250 or part	
Number of Manholes	1 point/150 or part	
Lift Stations	1 point/each	
Miles of Force Mains	1 point/mile or part	
<i>Odor Abatement</i>		
Chemical Feed System	2 points	
Air Entrainment System	2 points	
Bio-filter System	2 points	
<i>Maintenance Management System</i>		
Manual Maintenance Management System	3 points	
Manual Mapping System	3 points	
Computerized Maintenance Management System	5 points	
Computerized Mapping System	5 points	
Alarm or SCADA System for Lift Stations	5 points	
<b>TOTAL POINTS FOR YOUR SYSTEM</b>		
<b>System Classification Key</b>		
VSWWS**      Class I    0-30 points		
Class II    31-55 points	Class III    56-75 points	Class IV    76 or greater points
<b>YOUR SYSTEM CLASSIFICATION</b>		<b>VSWWS, I, II, III, IV (Circle one)</b>

\*\*The Very Small Wastewater System Classification is applicable to a system that serves 500 connections with a system size of six points or less.

\_\_\_\_\_  
Signature of Legal Owner or Owner's Representative      Date

**Mail form to: Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, Attn: Mike May**

UNITED STATES OF AMERICA

No. R-1

Up to \$7,700,000

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

SEWER REVENUE BOND, SERIES \_\_\_\_\_

<u>INTEREST RATE:</u>	<u>MATURITY DATE:</u>	<u>DATED DATE:</u>	CUSIP
_____ %	___/___/20__	___/___/20__	NO: _____
			N/A

REGISTERED OWNER: **STATE OF IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY, BOISE, IDAHO**

PRINCIPAL AMOUNT: **UP TO SEVEN MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS**

The City of Coeur d'Alene, Kootenai County, Idaho, a body politic and corporate organized and existing under and by virtue of the laws of the State of Idaho (herein called the "City") hereby acknowledges itself to owe and for value received promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner identified above, or registered assigns, the principal sum of up to Seven Million Seven Hundred Thousand and no/100 Dollars (\$7,700,000) pursuant to the State of Idaho Department of Environmental Quality Loan Offer, Acceptance and Agreement for Wastewater Treatment Facility Design and Construction dated May 22, 2013 (the "Loan Agreement") between the City and the State of Idaho Department of Environmental Quality (the "Lender"), plus interest accruing on the outstanding principal at the rate of \_\_\_\_\_ percent (\_\_\_\_%) per annum on the basis of a 360-day year and twelve 30-day months. Payments of principal and accrued interest hereon are payable pursuant to Schedule 1 attached hereto, payable semiannually on \_\_\_\_\_ and \_\_\_\_\_ of each year, commencing \_\_\_\_\_, 20\_\_, based on the outstanding principal under this Sewer Revenue Bond, Series 20\_\_ (this "Bond"), amortized over twenty (20) years, with the final payment of the outstanding principal and accrued interest thereon due and payable on the Maturity Date above.

The principal and interest payments on this Bond shall be payable in lawful money of the United States of America, to the Registered Owner hereof, at the address of such Registered Owner shown on the registration books of the City. Any Registered Owner of this Bond subsequent to its original Registered Owner is hereby placed on notice of all payments of principal and interest on this Bond prior to its transfer and all subsequent Registered Owners hereof hereby acknowledge that they have ascertained the actual unpaid amount of this Bond as of the date of transfer to them and hereby release the City from all obligations as to all principal and interest paid by the City prior to such date.

The Bond is subject to redemption at par, in whole or in part, on any date prior to the stated Maturity Date.

This Bond is issued for the purpose of financing the Cost of Acquisition of certain improvements (the "Project") to the City's sewer system (the "System"), pursuant to the Revenue Bond Act of the State of Idaho, being Section 50-1027 to 50-1042, inclusive, Idaho Code, and the Municipal Bond Law of the State of Idaho, being Idaho Code, Title 57, Chapter 2, and as authorized by the judicial confirmation of the Project, and pursuant to the City's Wastewater Bond Ordinance No. 3453 adopted November 29, 2012 ("Ordinance No. 3453"), as supplemented by the City's Supplemental Ordinance No. \_\_\_\_\_ adopted \_\_\_\_\_, 20\_\_ (the "Supplemental Ordinance," and collectively with Ordinance No. 3453, the "Bond Ordinance"). *Capitalized terms used but not otherwise defined herein shall have the meanings as set forth in Ordinance No. 3453 and the Supplemental Ordinance.*

The Treasurer of the City is acting as the Bond Registrar, authenticating agent and paying agent for this Bond (the "Bond Registrar").

This Bond is payable solely from the special fund of the City defined as the "Bond Fund" under the Bond Ordinance, and the 20\_\_ Debt Service Account created thereunder. The City has irrevocably obligated and bound itself to pay into the Bond Fund out of the Revenue of the System or from such other moneys as may be provided therefor certain amounts necessary to pay and secure the payment of the principal and interest on this Bond on parity with all Parity Bonds issued under the Bond Ordinance. This Bond is not a general obligation of the City. The City hereby covenants and agrees with the owner of this Bond that it will keep and perform all the covenants of this Bond and of the Bond Ordinance to be by it kept and performed, and reference is hereby made to the Bond Ordinance for a complete statement of such covenants.

The City does hereby pledge and bind itself to set aside from the Revenue Fund out of the Revenue of the System and to pay into the Bond Fund and the \_\_\_\_\_ Reserve Account thereunder the various amounts required by the Bond Ordinance and the Loan Agreement to be paid into and maintained in such fund and account, all within the times provided by the Bond Ordinance and Loan Agreement. To the extent more particularly provided by the Bond Ordinance, the amounts so pledged to be paid from the Revenue Fund out of the Revenue of the System into the Bond Fund shall be a lien and prior first charge thereon, equal in rank to the lien and charge of the Parity Bonds, and the amounts required to pay and secure the payment of Additional Bonds (as defined in the Ordinance) of the City hereafter issued on a parity of lien with the Parity Bonds, including this Bond, and superior to all other liens and charges of any kind or nature, except the Operation and Maintenance Expenses of the System.

The pledge of Revenue of the System and other obligations of the City under the Bond Ordinance may be discharged at or prior to the maturity or redemption of this Bond upon the making of provision for the payment thereof on the terms and conditions set forth in the Bond Ordinance.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

It is hereby certified that all acts, conditions, and things required by the Constitution and statutes of the State of Idaho to exist, to have happened, been done, and performed precedent to and in the issuance of this Bond have happened, been done, and performed.

IN WITNESS WHEREOF, the City of Coeur d'Alene, Kootenai County, Idaho, has caused this Bond to be signed with the manual signatures of the Mayor and the City Treasurer, and to be attested by the manual signature of the City Clerk, all as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF COEUR D'ALENE, KOOTENAI  
COUNTY, IDAHO

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

By: \_\_\_\_\_  
Troy Tymesen, Finance Director

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

CERTIFICATE OF AUTHENTICATION

Date of Authentication: \_\_\_\_\_

This Bond is the Sewer Revenue Bond, Series 20\_\_, of the City of Coeur d'Alene, Kootenai County, Idaho, in the principal amount of up to \$7,700,000, dated \_\_\_\_\_, 20\_\_, as described in the within-mentioned Bond Ordinance.

\_\_\_\_\_,  
Registrar

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Name of Transferee: \_\_\_\_\_

Address: \_\_\_\_\_

Tax Identification No.: \_\_\_\_\_

the within Bond and hereby irrevocably constitutes and appoints \_\_\_\_\_  
\_\_\_\_\_ of \_\_\_\_\_  
to transfer said bond on the books kept for registration thereof with full power of substitution in  
the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

NOTE: The signature on this Assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

SIGNATURE GUARANTEED:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an "eligible guarantor institution" that is a member of or a participant in a "signature guarantee program" (e.g., the Securities Transfer Agents Medallion Program, the Stock Exchange Medallion Program or the New York Stock Exchange, Inc. Medallion Signature Program).

\*\*\*\*\*



**Schedule 1**

**City of Coeur d'Alene, Kootenai County, Idaho  
Sewer Revenue Bond, Series 20\_\_\_\_**

**Payment Schedule**

**GENERAL SERVICES COMMITTEE  
STAFF REPORT**

**DATE:** May 22, 2013  
**FROM:** Renata McLeod, City Clerk  
**SUBJECT:** Approval of Horse Drawn Carriage Rides August 9-30, 2013

=====

**DECISION POINT:**

- To authorize horse drawn carriage rides in the downtown area between August 9-30, 2013.

**HISTORY:**

The City of Coeur d'Alene has authorized horse drawn carriage rides during the holiday season in 2007. These rides have become an annual tradition and have been approved annual under the Consent Calendar portion of the Council meetings. The Downtown Association has recently requested approval to provide the horse drawn carriage rides on certain dates in August this year (see attached request). The Downtown Association is working in partnership with Spokane Teacher's Credit Union and had committed to maintaining liability insurance, use of the Coeur d'Alene Chamber of Commerce parking lot for loading and unloading, clean up of waste, and rides will be free.

**FINANCIAL ANALYSIS:**

There is no financial impact to the City.

**PERFORMANCE ANALYSIS:**

The Downtown Association, who has provided proper assurances that they will be responsible for animal waste and loading and unloading on non-public property, makes this request.

**DECISION POINT/RECOMMENDATION:**

- To authorize horse drawn carriage rides in the downtown area between August 9-30, 2013.



RECEIVED

MAY 10 2013

CITY CLERK

May 10, 2013

Coeur d'Alene City Council

The Coeur d'Alene Downtown Association, in partnership with the Spokane Teacher's Credit Union (STCU), would like to provide free carriage rides in the Downtown area, traveling between 1<sup>st</sup> Street, East on Sherman to 6<sup>th</sup> Street, North on 6<sup>th</sup> Street to Lakeside Avenue, West on Lakeside Avenue back to 1<sup>st</sup> Street and the circle parking lot.

These rides would be available each Friday, August 9, 16, 23 and 30 from 5 pm – 8 pm..

The agreement to provide these rides was formed on the following requirements:

- ❖ Both the STCU and the Coeur d'Alene Downtown Association maintain General Liability insurance with coverage limits of at least \$1,000,000.
- ❖ The CdA Chamber parking lot has been allocated for the loading/unloading of the animals and carriages.
- ❖ Any animal wastes to be cleaned up by the carriage operator.
- ❖ The provider/operator of the animals will have final say as to inclement/unsafe conditions for the animals.
- ❖ The carriage rides will be offered free of charge.
- ❖ The carriage rides will be promoted in all of the Downtown advertising for the general holiday events.
- ❖ The Coeur d'Alene Downtown Association reserves the right to cancel the carriage rides if at any time practices detrimental to the general well being of the Downtown are brought to the notice of, and so voted upon by, the Downtown Board of Directors (or Executive Board).

We believe these carriage rides will enhance the spirit of the summer season Downtown.

Terry Cooper

A handwritten signature in black ink, appearing to read "Terry Cooper", is written over the typed name.

General Manager  
Coeur d'Alene Downtown Association

# ANNOUNCEMENTS

# Memo to Council

DATE: May 29, 2013

RE: Appointments to Boards/Commissions/Committees

The following re-appointment is presented for your consideration for the June 4th Council Meeting:

AL HASSELL      LAKE CITY DEVELOPMENT CORPORATION

Sincerely,

Amy Ferguson  
Executive Assistant

cc: Renata McLeod, Municipal Services Director  
Tony Berns, LCDC Executive Director

OTHER COMMITTEE MINUTES  
(Requiring Council Action)

May 28, 2013  
**GENERAL SERVICES COMMITTEE**  
**MINUTES**  
**12:00 p.m., Library Community Room**

**COMMITTEE MEMBERS PRESENT**

Mike Kennedy, Chairperson  
Ron Edinger  
Steve Adams

**CITIZENS PRESENT**

Tony Stewart, Kootenai County Task Force on Human Relations  
Christy Wood, Kootenai County Task Force on Human Relations  
Chris Meyer, Blackridge Properties, LLC

**STAFF PRESENT**

Renata McLeod, City Clerk  
Troy Tymesen, Finance Director  
Warren Wilson, Deputy City Attorney  
Jon Ingalls, Deputy City Administrator  
Sgt. Christie Wood, Police  
Juanita Knight, Senior Legal Assistant

80 + citizens in attendance

**Item 1. Downtown Association Sponsored Carriage Rides.  
(Consent Calendar)**

Renata McLeod, City Clerk, is requesting Council to authorize horse drawn carriage rides in the downtown area between August 9 – 30, 2013. Mrs. McLeod said the City authorized horse drawn carriage rides during the holiday season in 2007. The holiday rides have become an annual tradition and have been approved annually. The Downtown Association recently requested approval to provide the horse drawn carriage rides on certain date in August this year. They will have the same requirements as they do during the holiday season.

**MOTION: by Councilman Adams, seconded by Councilman Edinger, to recommend that Council authorize the request from the Downtown Associations to have horse drawn carriage rides in the downtown area between August 9- 30, 2013**

**Item 2. Lease Agreement with St. Vincent De Paul for 201 Harrison Avenue.  
(Resolution No. 13-034)**

Troy Tymesen, Finance Director, is requesting Council authorize the continuation of the lease agreement with St. Vincent De Paul of Coeur d'Alene for the old library structure at 201 Harrison Avenue, for a twelve-month terms beginning July 1, 2013, with an option to renew the lease annually for up to three additional terms. St. Vincent De Paul has occupied the building since 2009. The lease agreement requires a monthly payment of \$1,639.09. The lease contains a 3% annual escalation clause. St. Vincent DePaul has begun a capital campaign to raise the funds necessary to acquire the building or to make a land exchange. Mr. Tymesen also noted that the building houses 19 independent nonprofit organizations that provide two dozen social services.

Councilman Adams asked Mr. Tymesen if he knows the current appraised value of the property. Mr. Tymesen responded no. The property has not been appraised in 5-6 years. Prior to 2006 there were some drive by estimations but no formal appraisal done at this time. The value at that time was roughly \$800,000 to million. Currently, the rough numbers are north of \$500,000 less than \$700,000.

**MOTION: by Councilman Edinger seconded by Councilman Kennedy to recommend that Council adopt Resolution No. 13-034 authorizing the lease agreement with St. Vincent De Paul of Coeur d'Alene, for a twelve-month term beginning July 1, 2013, with an option to renew the lease annually for up to three additional terms.**

**COMMENTS:**

Councilman Adams stated, as with the Harbor Center property, I don't support government being in the landlord business. Therefore, he will oppose this item.

**Item 3. Non-Discrimination Ordinance.  
(Agenda Item)**

Councilman Kennedy announced that this item is being brought forth by the Kootenai County Task Force On Human Relations (KCTFHR).

Tony Stewart, Secretary, and Christie Wood, President, and Members of the Kootenai County Task Force on Human Relations, provided a cover letter as follows:

*Our human rights organization, the Kootenai County Task Force on Human Relations, has been dedicated to the principals of freedom, equality and justice for over 32 years. In carrying out our mission, we pursue two major goals.*

- 1. We have worked tirelessly to oppose and counter malicious harassment and hate crimes while supporting the victims including working with the Southern Poverty Law Center in the successful resolution of the "Keenans v. Aryan Nations" case.*
- 2. We have a long history of opposing discrimination directed at targeted classes of our citizens and especially regarding discrimination in housing, employment, and public accommodations.*

*It is this second issue that brings us here today. Although our Federal and State governments have enacted legislation to end discrimination in housing, employment and public accommodations for many Americans who historically suffered blatant discrimination and were relegated to second-class citizenship, the Congress and a majority of states including Idaho have failed to end discrimination and second-class citizenship status for the LGBT community.*

*The Human Rights Education Institute is joining with us in urging you to adopt an ordinance that removes this second-class citizenship for your LGBT constituents.*

Mr. Stewart and Mrs. Wood proceeded to pose and answer seven questions regarding these matters. More specifically described on the attached Exhibit "A".

Councilman Kennedy asked about the Boise ordinance and what makes it attractive for Coeur d'Alene. Mr. Stewart said that it includes the principles presented today and it put the responsibility within the city, in the legal department and law enforcement. Second, it allows for mediation. Most of the time, when a business understands what the law is, they tend to comply with it. And if that happens, the business is fined only \$100 and it is resolved. If not, it does empower the city to pursue it further. In addition, they are pleased with the proper exceptions within the ordinance.

Councilman Edinger asked about training costs for the Police Department and Prosecutors office. Mrs. Wood stated that something comparable would be the malicious harassment state statute. She provided the council members with a copy of a chart that showed the number of malicious harassment cases they have dealt with over

the years, which have been very low but very effective. She does not feel that adopting this ordinance will cause any additional hardship on the Police Department. Mr. Stewart said that in 32 years of experience they would suggest it would be fewer discrimination cases than malicious harassment cases. He added that he doesn't believe that in a democratic society we can make a decision to deny people rights because it might cost us financially.

Councilman Kennedy said he spoke with a pastor today who asked him how this ordinance would affect hiring in his church. Mr. Stewart noted that it is clearly stated in the ordinance that any congregation has a right, under their religious beliefs, to be exempt from this ordinance.

Pastor Paul Van Noy stated that while the Boise ordinance does protect the religious institutions, it does not protect religious people, as individuals. Pastor Van Noy went on to provide a statement which included 15 talking points, in opposition to the proposed ordinance. More specifically described on the attached Exhibit "B".

#### PUBLIC COMMENTS:

Pastor Bob Peterson, 2539 E. Teather Lane, Post Falls – Spoke in opposition of the proposed ordinance. As a Pastor he believes this is against God's way. This is a deviant life style. We love the sinner but hate the sin.

Brent Reagan, Borley Rd, Coeur d'Alene – Spoke in opposition of the proposed ordinance. Believes the ordinance is in conflict and a violation of laws already at the state and federal level and cited several examples. He believes this whole thing is just a political stunt.

Marshall Mend, 2071 Packsaddle, Coeur d'Alene – a founding member of KCTFHR. Spoke in support of the proposed ordinance. Spoke of the definition of sodomy and the marriage of one man and one woman. Said this is human rights for human beings. All human beings should be treated equally, bar none.

Robin Edwards, Bayveiw, ID – Spoke in support of the proposed ordinance as a person who has lost a job in this community based on gender identity. These matters affect real people who live in this community, who do feel excluded, and who are prevented from being full participants to the betterment of the community. Please consider this when making your decisions.

Charles \_\_\_\_, originally from Zambia Africa, 1528 W. Davies – He has lived in Hayden for two years and appreciates how this community has been a blessing to him. He spoke in regards to civil rights stating there is a distinction being born black as he never chose to be black. However, being gay is a choice. There is no way you can hijack the law used to free his people to use them for other purposes. God is able to change lifestyle. Don't confuse choice and a lifestyle.

Andrew Marchese, 601 E. Front. – Spoke of business and housing discrimination. Spoke of legal challenges. Said there are sufficient laws on the books that would allow for people to find remedy, therefore he sees this as a red herring.

Marilyn Muehlbach, 601 E. Front. Believes government is charged to protect the people. If there is a law that is applying to some people but other people don't have the ability to use that same law to protect their rights and safety in a community, then I believe another statute is necessary in order for them to receive those rights equally with other people.

Adrianna Berry, 1069 Trails End Rd, Bonner County - The Constitution is clear about the freedoms that we have in this country. Spoke in opposition to adopting the ordinance. Stated that President Coolidge said it is more important to defeat bad laws than it is to make new good ones. Believes this is bad law as it elevates a group

above everyone else and it will bring hate crimes the other way. This will limit our opinions and freedom of speech because this will not protect the rights as a Christian citizen.

Lori Erickson, 6806 S. Greensferry Rd, Cd'A – According to the University of Chicago's National Opinion Research Center, it places a figure of less than 2% of the country's population as gay, lesbian, or transsexual. Believes the City Council is considering discriminating against the rights of the majority of the people. Believes the Christian businesses have been adversely affected and their first amendment rights have been violated. There will be a law of unintended consequence that will financially affect the Christian community in Coeur d'Alene. Asked the council to vote NO on the proposed ordinance.

Josh Swan, 863 E. Dakota Ave., Hayden – said he is a very proud Idahoan. He had no choice to be gay or straight. He was given one choice and it was to accept himself for who he is. This ordinance would protect people and make it known that you can be who you are and he urged the Council to pass the ordinance.

Di (Dee?) Carlin, 613 N. 2<sup>nd</sup> St. – She is a social worker and her area of interest in LGBT issues. She believes the members of this community are mistaken if they believe people choose to live as outcasts. She explained gender identity of the brain. She urged the adoption of this ordinance.

Susan Moss, 902 E Cd'A – She grew up in Coeur d'Alene and left because as a lesbian she had a horrible time in the city. She returned because she is more confident in people and justice. She spoke to the legal arguments presented. She spoke in support of adopting the ordinance.

John Downing, North White Pines Drive, Cd'A - longtime resident of Cd'A and open gay in the community. He urged the support of this ordinance. He spoke of working with the LGBT citizens in this community. He said this ordinance allows us to be open and protected.

Thomas Carter, HREI, 414 W. Mullan – said this is all about discrimination. Does Coeur d'Alene want to discriminate or stand up for what's right.

~THE COUNCIL TOOK A FIVE MINUTE BREAK~

Councilman Adams commented: "I am frustrated by this because I've been accused of being partisan and ideology. This is because of my stance on economic and constitutional issues. Not because of any social positions I've taken. So when I think of partisan ideology, this is the very thing I think of. It has no place at this level. This is the wrong venue for this type of legislation. We should not be here today. This is partisan ideology on display. He said, Councilman Kennedy, you've lambasted me for being ideological, for being partisan, and so I would like to say that is being hypocritical of you for bringing this forward today."

Councilman Edinger asked Councilman Adams why he believes this is partisan.

Councilman Adams responded that this is a progressive liberal democrat ideal. This is a social issue, a social ideology. Municipalities should not be dealing with this type of legislation. It's discrimination legislation by its very nature. Any government action that forces a person to violate their conscience is discriminatory and has no place in a free society. Period.

Councilman Adams asked Deputy City Attorney, Warren Wilson, if the city can criminalize something that the state or federal government does not. Mr. Wilson responded, yes. We do it all the time. There are lots of ordinance in the city code that are criminal in nature that are not addressed under the state or federal code. That's true in Idaho and every state in the union. That is the nature of municipal corporations. We touch a lot broader base of things in some ways than the federal government. We are the lowest level, service providing, regulatory body there is.

Councilman Adams said he sees this as conflicting. Mr. Wilson said he does not see anything in the proposed ordinance that would be conflicting with state or federal laws.

**MOTION: by Councilman Kennedy, seconded by Councilman Edinger, to direct staff to prepare the Boise ordinance equivalent for the City of Coeur d'Alene for discussion and voting at the June 4<sup>th</sup> City Council meeting and that Councilman Adams questions be answered by the City Attorney.**

**COMMENTS:**

Councilman Edinger commented that as a City Councilman we have the duty to ensure that all our citizens are created-judged equally. He will support the ordinance.

Councilman Kennedy commented that he also will support this ordinance. He has had a number of discussions with people of faith on this topic. He said he doesn't know where the partisanship comes from as he knows gay republicans that support this and he knows gay democrats and gay libertarians. At the end of the day, it's not of any partisan nature that anyone has suggested.

The Council Member's went on to discuss their view as to whether this issue is partisan or not.

Councilman Kennedy went on to discuss the religious aspect if this topic.

**Item 4. Easement Agreement with Blackridge Properties, LLC for Front Avenue Pedestrian Tunnel.  
(Resolution No. 13-035)**

Councilman Kennedy announced that the applicant for this item is Chris Meyer representing Blackridge Properties. Councilman Kennedy noted that he works for Mr. Meyer's father and asked Warren Wilson, Deputy City Attorney, if he has any concerns with him participating in this discussion. Mr. Wilson said no.

Mr. Wilson said this request is for an underground easement for the construction and maintenance of a pedestrian tunnel under the Front Avenue sidewalk right-of-way to access the property at 401 Front Avenue. It is noted in the staff report that the construction of Front Avenue has had an impact on the property located at 401 front Avenue (currently the Bank of America building). One way to mitigate the impact is to allow the owner of the property, Blackridge Properties, LLC, to construct a pedestrian tunnel from the new McEuen Park parking garage to the property. The tunnel would be similar to the tunnel that the city allowed under Ironwood Drive. The tunnel and all associated costs would be borne by the owner of the property. There would be no impact to Front Avenue or the sidewalk as the tunnel would be constructed before the street and sidewalk are installed. Mr. Wilson also noted that there are a couple of other property owners kicking around this same idea.

Councilman Edinger asked why a tunnel from the parking garage? Mr. Wilson said it is to allow customers to be able to access the business directly without having to go up the stairs and across the street.

Councilman Kennedy commented that the staff report indicates no impact to the city financially. However, if redesign and meeting with staff occurs, who bares those costs. Mr. Wilson responded as with any development, staff is there to assist people to get them through development process. The costs of designing, building and maintaining the structure are all on the applicant.

Councilman Edinger asked where will the tunnel be built? Mr. Wilson said he's not sure where its exact location is at.

Councilman Adams commented to Mr. Meyer that his father, Steve Meyer, as well as Charlie Nipp are principles of Blackridge Properties. Mr. Meyer responded yes. Councilman Adams questioned when plans were being developed for the parking garage, is that when Mr. Nipp was chairman of LCDC? Mr. Meyer responded that he'd have to confirm on the records but believes that is correct. Councilman Kennedy commented that that is not correct. Mr. Nipp was not chairman of LCDC when the plans were drawn for the parking garage. Councilman Adams further commented that he feels a little insulted here that he's supposed to believe that the tunnel was not part of the original plan.

Councilman Edinger asked Mr. Meyer why a tunnel when people have walked to the bank in the rain and snow before the project. Mr. Meyer responded that there doesn't have to be a tunnel. They just thought it would be a worthwhile investment for potential, future, interconnections and convenience of the users. The thought is that it would provide for better connectivity for those not wanting to walk up the stairs.

Councilman Edinger asked if access to the tunnel would be public. Mr. Meyer said yes, during business hours. However, currently it is a tunnel to nowhere. It won't connect to the current building. It will be a tunnel to the property side for future potential use.

Councilman Edinger questioned what the City would do if someone else also wants a tunnel in the future. Mr. Wilson said the city would take each instance on a case-by-case basis. If it's something the city can accommodate, without cost to the city, he's not sure why the city wouldn't look into it.

Councilman Kennedy asked if another entity comes to the city after the parking garage is built, how would that factor in. Mr. Wilson said it would then be a much more expensive proposition for them to do it at that point. It would also become an issue as it would have to be cut into the structure which would impact several things such as the need to close existing parking spots for the construction process.

Councilman Kennedy questioned if this option had been discussed with other entities. Mr. Wilson said if it has, he's not been involved in those discussion, However, he does know a couple other entities are kicking the subject around.

Councilman Kennedy made a motion to approve the easement for the pedestrian tunnel access to 401 Front Avenue, hearing no second the item will move to council without recommendation.

**MOTION: by Councilman Kennedy, to approve the easement for the pedestrian tunnel access to 401 Front Avenue, hearing no second, the item will move to Council without recommendation.**

The meeting adjourned at 2:00 p.m.

Respectfully submitted,

*Juanita Knight*  
Recording Secretary

Thank you for this opportunity to propose an anti-discrimination ordinance.

Our human rights organization, the Kootenai County Task Force on Human Relations, has been dedicated to the principals of freedom, equality and justice for over 32 years. In carrying out our mission, we pursue two major goals:

1. We have worked tirelessly to oppose and counter malicious harassment and hate crimes while supporting the victims including working with the Southern Poverty Law Center in the successful resolution of the “Keenans v. Aryan Nations” Case.
2. We have a long history of opposing discrimination directed at targeted classes of our citizens and especially regarding discrimination in housing, employment and public accommodations.

It is this second issue that brings us here today. Although our Federal and state governments have enacted legislation to end discrimination in housing, employment and public accommodations for many Americans who historically suffered blatant discrimination and were relegated to second-class citizenship, the Congress and a majority of states including Idaho have failed to end discrimination and second-class citizenship status for the LGBT community.

The Human Rights Education Institute is joining with us in urging you to adopt an ordinance that removes this second-class citizenship for your LGBT constituents.

We respectfully pose and answer seven questions regarding this injustice:

## **The Proposed Anti-Discrimination LGBT Ordinance for the City of Coeur d'Alene**

### **FORMAL DOCUMENT AND STATEMENT: The Kootenai County Task Force on Human Relations Board of Directors**

Based on our 32 years of promoting human rights and opposing any law, public policy or group action of discrimination resulting in second class citizenship and denial of equality for some segments of our society, we come before the city of Coeur d'Alene to urge your passage of this ordinance to prohibit discrimination in the areas of housing, employment and public accommodations based on sexual orientation, gender identity & expression (The LGBT community).

We respectfully submit to you our responses to seven questions frequently asked when considering adoption of local ordinances baring discrimination based on sexual orientation.

#### **FIRST QUESTION:**

**Are there any Federal or state of Idaho statutes protecting the LGBT community from discrimination in housing, employment or public accommodations? The answer is NO except for two Federal requirements that protect only a small segment of Idahoans.**

The United States Civil Rights Act of 1964 Title II (Public Accommodations), Title III (Public Facilities) and Title VII (Equal Employment Opportunity) gives no protection against discrimination based on sexual orientation. The same is true of the Federal Equal Employment Opportunity Act of 1972 that amended Title VII of the 1964 Civil Rights Act.

The Federal Fair Housing Act of 1968 and as amended only provides protection based on race, religion, color, national origin, disability, gender and since 1988 familial status (non-discrimination of families with children under age 18 or pregnant women).

On January 21, 2011 the U.S. Department of Housing and Urban Development (HUD) issued new rules prohibiting discrimination based on sexual orientation or gender identity in Federal HUD-assisted or HUD-financed housing. As of 2013, the HUD rules apply to only 6.2% of the housing units in Coeur d'Alene. **(See Footnote 1)**

President Bill Clinton, by presidential executive order, banned discrimination based on sexual orientation regarding hiring and promotion of Federal employees. In 2010 the ban against discrimination was extended

to sexual identity. The presidential executive orders only apply to Federal employees leaving all other LGBT employees subject to discrimination unless prohibited by either state statutes or local ordinances.

As of 2012, only 21 states and the District of Columbia had laws prohibiting housing discrimination on the basis of sexual orientation. Many of those same states prohibit discrimination in employment and public accommodations. There are five additional states that prohibit discrimination but limited to only public employment based on sexual orientation.

The attempts over the past seven years to persuade the Idaho Legislature to add protection based on sexual orientation and gender identity and expression to the Idaho Civil Rights statutes have not been given serious consideration or reported out of committee.

The decades of failure to act by the United States Congress as well as the Idaho Legislature directs Idaho human rights advocates and organizations to seek relief by turning to local governments under Article 12, section 2 of the Idaho Constitution and sections 50-301 of the Idaho Code. These constitutional and statutory provisions provide cities the freedom to exercise all powers not specifically prohibited by or in conflict with the general laws or the Idaho Constitution. (**See Footnote 2**)

## **SECOND QUESTION:**

**Are there any cases of discrimination based on sexual orientation in our city and region? The answer is YES.**

Let us be clear that the overwhelming majority of business in Coeur d'Alene that provide employment, housing and public accommodations are strong supporters and advocates of equality and fairness for all our residents. However and unfortunately there are exceptions from a few entities that practice discrimination.

The KCTFHR with decades of promoting human rights and serving as advocates for persons who have been victims of many forms of discrimination, harassment and hate crimes, we come before you with knowledge and expertise regarding this problem. Let us share with you three of our list of cases involving discrimination against the LGBT community.

### **CASE ONE:**

Approximately five years ago, Tony Stewart received a call from a dental assistant in Coeur d'Alene who had been fired on that day when her employer, the dentist, learned that she was lesbian. Her work evaluations were superior. She asked for advice and assistance from the KCTFHR. Stewart had to sadly inform her that there were no Federal or state laws preventing the discrimination and thus she had no legal remedy.

## **CASE TWO:**

We learned of a housing discrimination case that took place in 2012 in Coeur d'Alene when a North Idaho College student was evicted from her apartment when the landlord learned that she was in a lesbian relationship. Again she had no legal remedy for the discriminatory act.

## **CASE THREE:**

One of the most grievous and sad cases happened recently in a northern Idaho city during the death of a same sex partner. The obituary announcing the gay man's death included the name of his same-sex surviving partner. Upon seeing the obituary, the employer of the surviving partner fired him upon learning of the gay relationship. The grieving partner had to now also deal with loss of his income during one of the most painful moments of his life. Once again the gentleman had no legal remedy.

## **THIRD QUESTION:**

**Should the city of Coeur d'Alene reject adopting the anti-discrimination ordinance due to any possible additional cost for the city regarding law enforcement and the legal resources to enforce the ordinance? The answer should be NO.**

We find it in direct conflict with the core principles of democracy to suggest that some members of our fair city must remain second-class citizens, subject to discrimination and denied equal rights and fairness based on the argument that the adoption of the ordinance might require some additional resources of the city. This argument is equivalent to proposing that we open our city to all forms of discrimination based on limited resources. At what price, do we forfeit fairness, equality and justice for any of our citizens in our democracy?

## **FOURTH QUESTION:**

**Should we not wait until there are Federal & state legislative actions to prohibit the discrimination? The answer is NO.**

It has been 49 years since the passage of the United States Civil Rights Act of 1964 that excludes protection for the LGBT community and almost the same amount of time for the other Federal civil rights laws addressing jobs, housing and public accommodations.

This flawed argument is as old as civilization. In reality, it is an attempt to deny rights to the minority. The late Dr. Martin Luther King, Jr. spoke eloquently in condemning this tactic in his "Letter from the Birmingham Jail" on April 16, 1963. He was responding to a group of ministers who had

signed a letter criticizing him for his peaceful disobedience that they described as “unwise and untimely” activities leading to his arrest.

Dr. King’s impatience with further delay in obtaining justice and equality for his people is most pertinent to the issue before you today. Dr. King wrote in part:

**“We have waited for more than 340 years for our constitutional and God given rights. The nations of Asia and Africa are moving with jet like speed toward gaining political independence, but we still creep at horse and buggy pace toward gaining a cup of coffee at a lunch counter. Perhaps it is easy for those who have never felt the stinging darts of segregation to say, ‘wait,’...There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair.”**

### **FIFTH QUESTION:**

#### **What does the ordinance do and not do?**

##### **The Ordinance Protects:**

First, the ordinance will add protection for the LGBT residents in housing, employment and public accommodations within the city of Coeur d’Alene.

Second, the ordinance will stop employers and landlords from discriminating based on sexual orientation or gender identity.

Third, it will protect the right of sexual minorities to be served in all public accommodations such as restaurants, concert halls, theaters and all other public facilities.

Fourth, the ordinance recognizes, protects and embraces the democratic principal of equality.

##### **The Ordinance does not:**

First, the ordinance does not create quotas or special protections.

Second, the ordinance does not create any special rights or privileges.

Third, the ordinance does not create undue financial burdens when the ordinance permits the prosecutor to reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective action.

Fourth, the ordinance does not require religious organizations or religious businesses or religious non-profits to comply.

Fifth, the ordinance exempts ones own home/residents from the housing ordinance as well as housing accommodations for not more than two families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations (e.g. duplex).

**SIXTH QUESTION:**

**Is this a moral, ethical and fundamental democratic issue?  
The answer is YES.**

We are before you facing the crucial question of whether we will elect to advance the moral precept of embracing social justice encompassing freedom, equality and justice for our fellow human beings that is the root of any democracy.

The Kootenai County Task Force on Human Relations is before you inspired with the words from the following advocates for justice:

**Elie Wissel**, a world renowned humanitarian, has said: “There may be times when we are powerless to prevent injustices, but there must never be a time when we fail to protest.”

**Mike Masterson**, Boise Police Chief, during his testimony before the Idaho State Legislature’s House and Senate State Affairs Committees on March 20, 2013 stated: “Justice for me professionally must include protecting citizens against being the victims of a crime, including the injustice of being denied housing or employment or refused a service accommodation based solely on sexual orientation or gender identity...”

**SEVENTH QUESTION:**

**Will the decision of the Coeur d’Alene City Council have an impact beyond the boundaries of the city and the state of Idaho? The answer is YES.**

Individuals and organizational members and leaders across America will observe your decision and draw conclusions based on that outcome. Most large corporations as well as civic groups today are characterized by a diverse multi-culture employment and membership including policies that embrace and promote diversity. They are correctly sensitive about visiting communities with regard to a welcoming environment for their members including their LGBT employees and members.

Corporate America has already begun voluntarily implementing this type of protection. Ninety-four per cent (94%) of the top 100 companies in the United States have policies banning discrimination based on sexual orientation as well as the top 50 Fortune 500 companies. The companies prohibiting discrimination include for example IBM, Southwest Airlines,

Verizon, Apple, Wal\*Mart, Ford, Sears, Micron Technology, Wells Fargo and Hewlett Packard.

## **CONCLUSION**

As members of the human race, each of us is constantly in the process of establishing what our legacy will be when we are no longer here. We will be remembered and judged by future generations based on respect for others.

In an interview with Cynthia Taggart of "The Spokesman-Review" regarding the work of the KCTFHR on June 28, 1998 Tony Stewart said: "I don't think there is anything more important than how human beings treat each other. How you treat people is the essence of who you are."

1

The city of Coeur d'Alene has 19,000 utility units of which 13,754 are residential and of those 895 units are HUD assisted or financed or only 6.2% that protect the LGBT community from housing discrimination.

2

As of 2013, there are 205 cities and counties with local ordinances prohibiting some form of discrimination based on sexual orientation.

Appendix I: KCTFHR February 2, 2013 letter to the Coeur d'Alene Mayor and City Council.

**Romer v. Evans 517 U.S. 620 (1996)**

**This case from the state of Colorado reviewed a voter approved state constitutional provision (Amendment 2) that prevented any city, town or county in the state from taking any legislative, executive or judicial action to recognize gay and lesbian individuals as a protected class. The amendment repealed all previous anti-discrimination local legislation and prevented any future such laws banning... “discrimination based on sexual orientation” in housing, employment, education, public accommodations, health and welfare services, as well as other transactions and activities.**

**Justice Anthony Kennedy in a 6 to 3 decision speaking for The United States Supreme Court said:**

**“Amendment 2 nullified specific legal protection for this “Targeted Class”; it is a classification of person’s undertaken for its own sake, something the “Equal Protection Clause does not permit....A law declaring that in general it shall be more difficult for one group of citizens than all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.”**

**Although “Romer v. Evans” does NOT permit a state constitution to forbid any and all local anti-discrimination laws, the Court’s decision does not require the passage of such local ordinances.**

**This fact is exactly why the city of Coeur d’Alene should adopt this anti-discrimination ordinance. The LGBT community in Coeur d’Alene presently has no relief in either Federal Law or the Idaho code preventing discrimination in housing, employment and public accommodations.**



# Peace Lives Here

Phone: 208-292-2359 ■ Fax: 888-871-5106 ■ P.O. Box 3281, Coeur d'Alene, ID 83816 ■ [www.hrei.org](http://www.hrei.org) ■ [info@hrei.org](mailto:info@hrei.org)

5-28-2013

To the City of Coeur d'Alene Mayor and Council,

As the Executive Director of the Human Rights Education Institute, I am writing this letter on behalf of the Institute, its supporters and myself. First and foremost, the Human Rights Education Institute supports the city ordinance that would prevent discrimination in housing, employment and public accommodations based on sexual orientation, gender identity and expression (LGBT community) in the city of Coeur d'Alene.

The Institute strongly supports this ordinance, as we believe that respect, dignity and equality is a basic right for each and every person in our community, state, nation and world. To knowingly exclude or discriminate against a person based on sexual orientation, gender identity and expression (LGBT community) is a violation of human rights as well as an acceptance of discriminatory behavior and views. We have battled ignorance of human rights in the form of racism, hate and criminal acts, and this city ordinance is a step in the right direction not only for Coeur d'Alene but also for Idaho, as we work to stop the stigmatization of North Idaho as non-accepting of diversity, respect and equality for all. As a state, we were one of the last to adopt the Martin Luther King Holiday. Today Coeur d'Alene has the opportunity to show leadership and commitment to human rights by setting precedence as one of the first cities in Idaho to adopt an ordinance that protects and demonstrates unity for all members of our community.

In conclusion, people break this issue down in various ways. Some see it through religious eyes, some through legal eyes and some through fearful eyes. As the Executive Director, it is my vision and passion that people see people as people and nothing less. To view people in this fashion, rather than defining them by their differences is a vital step that we need to take as a community towards peace and unity for all.

A handwritten signature in black ink, appearing to read "T. Carter", is written over a horizontal line.

Executive Director / CEO  
Human Rights Education Institute  
W: 208-292-2359  
C: 208-819-7770  
[tcarter@hrei.org](mailto:tcarter@hrei.org)  
[www.hrei.org](http://www.hrei.org)

#### Board of Directors

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February 4, 2013

The Honorable Sandi Bloem  
Mayor, City of Coeur d'Alene  
Coeur d'Alene City Council  
710 E Mullan Avenue  
Coeur d'Alene, Idaho 83814

Dear Mayor Bloem and City Council:

We have been encouraged to witness the passage of city ordinances preventing discrimination in housing, jobs and public accommodations based on sexual orientation, gender identity/expression in Sandpoint, Boise and Ketchum, Idaho. We also understand that the cities of Moscow, Pocatello and Idaho Falls have similar ordinances under consideration.

The Kootenai County Task Force on Human Relations Board preamble supports the principle that all persons are created equal and we recognize the dignity and worth of every human being. All law-abiding individuals should enjoy the fruits of freedom and be free from discrimination based on such characteristics as sexual orientation, gender identity/expression. Our city has the opportunity to take yet another major step forward in guaranteeing the fundamental rights of all its residents by the passage of this anti-discrimination ordinance in housing, jobs and public accommodations.

We urge you to join the Idaho cities that have already made their communities more welcome and friendly to all their residents.

Over the past three decades the City of Coeur d'Alene has been recognized and honored throughout the Nation for its uncompromising and courageous stand in opposing those forces who came to our area promoting a doctrine of Neo-Nazism. Coeur d'Alene has been a great friend and landlord to the Human Rights Education Institute in one of the cities' buildings just to name an example of your many efforts on behalf of equality.

The city of Coeur d'Alene in 1990 was the first city in Idaho to receive the distinguished "All American City Award" from the National Civic League (formerly the National Municipal League). The Kootenai County Task Force on Human Relations, on several occasions, has been informed by the staff of the NCL that one of the major reasons for the "All American City Award" to Coeur d'Alene was due to the strong stand the community had taken in promoting human rights.

In 1987, Coeur d'Alene Mayor Raymond Stone, Kootenai County Task Force on Human Relations president and Catholic priest Bill Wassmuth and Kootenai County Undersheriff Larry Broadbent traveled to New York City Hall where the City of Coeur d'Alene accepted the internationally prestigious "Raoul Wallenberg Civic Award" for boldly standing up for human rights. In fact, the Raoul Wallenberg

Committee of the United States in presenting the award informed the delegation from Coeur d'Alene that the award had just been established in order to recognize and honor the people of Coeur d'Alene.

The City of Coeur d'Alene has the opportunity to move forward in advancing the principles we have all promoted for decades. We urge you to stand on the broad shoulders of those who have gone before you in confirming once again the dignity and rights of all our residents and share in this noble legacy.

Let us live up to that wonderful slogan: Coeur d'Alene, "the City with a Heart".

Respectfully,

Kootenai County Task Force on Human Relations Board of Directors

\_\_\_\_\_  
Christie Wood, president

\_\_\_\_\_  
Michelle Fink, vice-president

\_\_\_\_\_  
Ellen Stamos, treasurer

\_\_\_\_\_  
Tony Stewart, secretary

**P.S. Since this original letter was sent to the City of Coeur d'Alene, we are happy to report that the City of Moscow, Idaho has unanimously adopted their anti-discrimination ordinance.**

## Statement to CDA General Services Committee

Opening comments:

Thank you for allowing us to address each of you today.

You should know that we are not “discriminating” and will not be. We are not homophobic, and we love all men and women equally.

That being said... Items for consideration:

1) Passing this ordinance will send a message to the city and the surrounding areas that we are or were a discriminating city?

Illustration: The By-Product – Attorney Mike Gridley on Sandpoint.

Recently we were faced with the question of our discrimination policies by “*The Western Orthopedic Association*”. “*President Dr. Ellen Raney sent a letter April 5 to Mayor Sandi Bloem asking for information that points to local efforts to ‘promote the inclusion of racial and ethnic diversity’*” and successfully gained the opportunity to host the event without this ordinance.

We have been successfully recovering from the reputation of being a racist community. Mayor Bloem told the CDA Press that she is grateful that this is a, “*stigma from which North Idaho has been working to distance itself.*” And then added, “*I feel grateful this community has taken a strong message against hate and bigotry.*”

The request for this ordinance will revive the national stigma associated with North Idaho.

2) This ordinance imposes upon the rights of one party or group in order to provide rights to another group or person and therefore does not protect the rights of all people groups in CDA?

The 1<sup>st</sup> Amendment to the Constitution of the United States of America protect religious freedom, and “...prohibits the making of any law respecting an establishment of religion,” or “impeding the free exercise of religion...”

The 14<sup>th</sup> Amendment to the Constitution of the United States says, “*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...*” and in the Due Process Clause the United States Supreme Court

in Meyer vs. Nebraska declared that United States Citizens are free, *“to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”*

Applied to the Christian for example, I would point out that Christians are not to be “unequally yoked” (2 Corinthians 6:14). This ordinance would force a violation of the Christian standard and conscience by forcing the Christian citizen to submit to a law requiring the employment of, or housing of persons of conflicting values. This is a violation of our Constitutional Rights.

3) This ordinance violates the religious freedom of individual citizens, from at minimum, the three major world religions causing those very citizens to violate their rights of conscience and good faith in their religious faith.

It is not the place of the State or City to force a morality –or immorality upon society. There may come a day when another group, for instance a religious group, may come and demand that we enforce their “morality”... for Example: Islam and their Sharia Law.

4) This ordinance overlooks the Idaho Statute Title 18 (Crimes and Punishments) Chapter 66 (Sex Crimes 18-6605) That clearly states, *“Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison not less than five years.”*

And has been supported and is in effect per the, *“Idaho Statutes and Constitutions... updated to the web July 1 following the legislative session.” “Idaho Statutes and Constitutions are current through the 2012 Legislative Session.”*

Romans 1:26-27 States, *“God gave them up to vile passions. For even their women exchanged the natural use for what is against nature. Likewise also the men, leaving the natural use of the woman, burned in their lust for one another, men with men committing what is shameful...”*

According to the Idaho Supreme Court an *“infamous crime against nature”* is defined to include anal sex, and sex with an animal.

Although the United States Supreme Court in the 2003 case Lawrence vs. Texas “struck down the sodomy law in Texas and, by extension, invalidated sodomy laws in

thirteen other states...” This “ruling does not mean that ‘sodomy laws’ are gone.”<sup>(1)</sup> The law itself remains on the books in Idaho and is still used to enforce “*infamous crimes against nature*” related to bestiality, public homosexual sex, et al. The fact that the law itself remains as Idaho law is cause enough to disallow this proposed ordinance. It is in contradiction to Idaho law.

(1) [www.IdahoAgenda.net](http://www.IdahoAgenda.net) (LGBT Website)

5) This ordinance creates the potential for more lawsuits, fines, and imprisonment, thus burdening the community, our court systems and incarceration facilities.

6) This ordinance will add additional burden to our law enforcement personnel and associated departments by requiring police enforcement of the ordinance.

7) This ordinance moves our city, and culture from so called toleration to endorsement of what is considered “*against nature*”, and tears away at the traditional model of sexuality established from the foundations of the world, and that which is naturally understood by the procreative result of sexual union.

8) This ordinance moves the State of Idaho one step closer to endorsing same sex marriage. Marriage is and should be defined as the union of one man and one woman. This has been the model since the beginning of time.

9) This ordinance will bring unintended consequences that may provide serious health complications.

Example: A friend recently donated plasma and several of the health screening questions were intended to isolate behavior that might make one's plasma unusable. Questions included concerns about blood transfusions, drug use, piercings within a certain period of time, contact with prostitutes, etc. One of the revealing questions was whether you had had any sexual contact with another man even once in the course of your life. In other words - that it is unhealthy and therefore a risky activity. Good science recognizes this. This ordinance could make it a crime to ask this or other questions and would be the cause of health concerns to others in the community.

10) This ordinance creates a defensible opportunity for pedophiles to prey on young children of the opposite sex. For example: The ordinance's gender identity and gender expression language would allow men to be able to use a woman's restroom (and vice versa) in "public accommodations" based upon their subjective sense of whether they are male or female allowing for male pedophiles to have a defense for using a girls bathroom. The security of locker rooms, dressing rooms, bathrooms and other separate facilities are all compromised.

*The locker room issue became a problem in the Stephen to Stephanie Transsexual case in the late 1990's at our own CDA Police Department.*

11) This ordinance fails to apply the same standards of desired generosity and hospitality to groups outside the LGBT community that don't share the same lifestyle choices and convictions.

12) A threat has been made that should this ordinance fail to pass there would be severe national repercussions negatively affecting Coeur d'Alene. Does this suggest that those pushing for this ordinance will bully the city should the ordinance fail to pass.

13) The Idaho state legislature has declined to consider a similar statewide measure for seven years in a row. There is wisdom in understanding why the legislators have made this decision? The legislators have taken a stand to hold into law the "Crimes Against Nature" statute.

14) This ordinance will polarize the community and will create an ongoing backlash.

15) This ordinance has or will cause those who are non-supportive of the ordinance to be seen as an enemy of kindness. Indirectly, this is a form of intimidation. None of those who are non-supportive want to be viewed this way - *therefore many are willing to go along to protect themselves from the intimidating repercussions. This should not be the product of this ordinance or its promotion!*

## Staff Report

DATE: May 28th, 2013

FROM: Troy Tymesen, Finance Director

RE: The lease of City owned property at 201 Harrison Avenue to St. Vincent de Paul of Coeur d'Alene

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**DECISION POINT:** To authorize the continuation of the lease agreement with St. Vincent de Paul of Coeur d'Alene, for a twelve-month term beginning July 1, 2013, with an option to renew the lease annually for up to three additional terms.

**HISTORY:** The City of Coeur d'Alene owns the structure at 201 Harrison Avenue, which is the previous location of the Coeur d'Alene Public Library. St. Vincent DePaul has occupied the building since 2009. The building was previously leased to the Salvation Army.

**FINANCIAL ANALYSIS:** The lease agreement requires a payment at \$1,639.09. The lessee is responsible for all utility payments as well as grounds maintenance. The lease contains a 3% annual escalation clause. There is also Sale of Building clause that informs the lessee that the City may sell the building with proper notice. St. Vincent DePaul has begun a capital campaign to raise the funds necessary to acquire the building or to make a land exchange.

**PERFORMANCE ANALYSIS:** The building has been used for professional office space for the lessee and is known as the Helping Empower Local People (H.E.L.P.) Center. St. Vincent DePaul has delivered on its goal to create a "one stop" center to provide crucial services to the homeless and those in need. The building houses 19 independent nonprofit organizations that provide two dozen social services. The following programs serve between 75 and 100 people per day: ICARE, teaching parenting and child abuse prevention, USDA Child Care Food Program, Crosswalk North Idaho, Social Security Disability Insurance documents, Idaho Department of Labor and Commerce, employment services, Idaho Department of Veteran's Services, Dirne Community Health Clinic, NAMI, National Alliance for the Mental Ill, Panhandle Health District, Community Partnerships, St. Vincent DePaul Social Service offices, and St. Vincent DePaul Affordable Housing offices.

**DECISION POINT/RECOMMENDATION:** To authorize the continuation of the lease agreement with St. Vincent DePaul of Coeur d'Alene, for a twelve-month term beginning July 1, 2013, with an option to renew the lease annually for up to three additional terms.

RESOLUTION NO. 13-034

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING THE LEASE OF CITY PROPERTY AT 201 HARRISON AVENUE, COEUR D' ALENE, IDAHO TO ST. VINCENT dePAUL OF NORTH IDAHO.

WHEREAS, the General Services Committee of the City of Coeur d'Alene has recommended that the City of Coeur d'Alene enter into a Lease Agreements with St. Vincent de Paul, containing the substantive provisions of the lease agreement attached hereto as Exhibit "A" and by reference incorporated herein; 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 Lease Agreements; NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into Lease Agreements with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreement to the extent the substantive provisions of the agreement remain intact.

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

DATED this 4<sup>th</sup> day of June, 2013

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

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

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

ROLL CALL:

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

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

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

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

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

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

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

## LEASE AGREEMENT

THIS LEASE entered into this 4<sup>th</sup> day of June, 2013 by and between the **City of Coeur d'Alene**, hereinafter called "Lessor," and **St. Vincent de Paul of Coeur d'Alene**, hereinafter called "Lessee."

1. **NONSTANDARD PROVISIONS.** The following provisions constitute the nonstandard provisions of this Lease as referred to elsewhere herein:
  - A) **Floor Area:** The agreed floor area of the premises is Nine Thousand sixty four square feet (9,064 sf), of those premises, with additional sub-structure of three thousand eight hundred fifty-eight (3,858) square feet on the following described real property located in 201 E. Harrison Avenue, Coeur d'Alene, County, Idaho. The legal description of this property is as follows: Lot 7,8,9,10,11, and 12, Block 40 Amended plat of Sherman Addition, according to the plat recorded in the office of the County Recorder in Book B of Plats at Page 77, records of Kootenai County Idaho, excepting there from the South 2 feet of lot 7. A map of the subject real property is attached hereto as Exhibit A and incorporated herein by this reference.
  - B) **Term:** The lease term shall be twelve (12) months commencing on July 1, 2013 and ending on June 30, 2014. There is an option to renew the lease annually for up to three additional terms.
  - C) **Lease Rate:** The lease shall be due by the first day of the month. Said sum shall be One Thousand Six Hundred Thirty-Nine Dollars and 09/100's (\$1,639.09) Dollars. Annually the lease will increase by three (3%) percent.
  - D) **Use:** The premises shall be used for professional office space, also known at the Helping Empower Local People (H.E.L.P) Center.
2. **PREMISES.** Lessor hereby Leases to Lessee, and Lessee hereby Leases from Lessor, upon the terms and conditions herein set forth, 201 Harrison Avenue, Coeur d'Alene, Idaho 83814. The area so Leased is herein called "Premises."
3. **TERM.** The Lease term shall be as stated in paragraph 1b.
4. **LEASE PAYMENT.** The lease payment described in paragraph 1.c. shall be due on the first day of the month. Said payment shall be paid to Lessor at Attn: Finance Department, 710 E. Mullan Avenue, Coeur d'Alene, Idaho 83814. A late charge of twelve percent (12%) per annum or Twenty-five (\$25.00) dollars whichever is greater will be charged on payments received after the tenth (10) day of the month.
5. **TENANT IMPROVEMENTS:** Lessor shall allow Lessee Zero (\$0.00) dollars per

square foot for Tenant Improvements.

6. **USE.** The premises shall be used only for the purpose set forth in paragraph 1.d. Lessee shall observe such reasonable rules and regulations set forth by Lessor.
7. **COMPLIANCE WITH THE LAW:** Lessee shall, at Lessee's expense comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record. Lessee shall not use or permit use of the Premises in any manner that will tend to create a waste or nuisance.
8. **POSSESSION.** If Lessor fails to deliver possession of Premises ready for occupancy at the commencement of the Lease term, Lessor shall not be liable for any damage caused thereby, nor shall this Lease become void or voidable, nor shall the Lease term be extended; but in such case, Lessee shall not be obligated to pay rent or perform any of the obligations of Lessee under the terms of this Lease until possession of the Premises is tendered to Lessee. If Lessee occupies the Premises prior to the Commencement Date, such occupancy shall be subject to all the provisions of this Lease and such occupancy shall not change the termination date of said Lease.
9. **ACCEPTANCE OF PREMISES.** The taking of possession by Lessee shall be deemed Lessee's agreement and acknowledgment that the Premises is in a tenantable and good condition, and that Lessor has completed all work agreed to be accomplished by Lessor at Lessor's expense under the terms of this Lease to prepare the Premises for Lessee's occupancy. Lessor agrees to allow Lessee use of any identified furniture during the lease term identified in 1b.
10. **UTILITIES.** Lessee shall pay timely, when and as due, all charges for utilities furnished to, used upon or charged against said premises during the term hereof, including but not limited to charges for telephone, water, sewer, garbage, electricity, gas, oil or other heating facility; provided.
11. **CARE OF PREMISES, REPAIRS AND ALTERATION.** Lessee shall take good care of the Premises. Lessee shall, at the termination of this Lease by the expiration of time or otherwise, surrender and deliver up Premises to Lessor in as good condition as when received by Lessee from Lessor or as thereafter improved, reasonable use and wear and insured damage by fire or other casualty, excepted. Lessee hereby waives any right to make repairs at Lessor's expense. Lessee shall not make any alterations, additions or improvements in or to the Premises, or make changes to locks on doors, or add, disturb or in any way change any plumbing or wiring without first obtaining written consent of Lessor, which consent shall not be unreasonably withheld. All damage or injury done to Premises by Lessee or by any person who may be in or upon Premises with the consent of Lessee, shall be paid for by Lessee and Lessee shall pay for all damage to the Building caused by Lessee's misuse of Premises or the appurtenances thereto. Lessor may make any alterations or improvements which Lessor may deem necessary or advisable for the preservation, safety or improvement of Premises or Building; they will be made at times convenient to Lessee. All alterations, additions and improvements, except fixtures installed by Lessee which are removable without damage to Premises, shall become the

property of Lessor upon the termination of the Lease term. Lessor shall keep the foundations, exterior walls, canopy, roof, all mechanical equipment, downspouts, gutters and all surface water drains in good order and working condition prior to and during the term of this lease. Lessee shall be responsible for the prompt removal of snow and ice on the Premises, and landscape/grounds maintenance. Lessee shall exercise reasonable care to maintain safe conditions of the premises at all time.

12. **SPECIAL IMPROVEMENTS.** Lessee shall reimburse Lessor for Lessor's costs of making all special improvements required by Lessee, including, but not limited to, counters, partitioning, electrical and telephone outlets and plumbing connections, as being furnished by Lessor. No special improvements shall commence prior to written agreement by Lessee.
13. **ENTRY AND INSPECTION.** Lessee shall permit Lessor or its agents to enter into and upon Premises at all reasonable times on reasonable notice and during normal business hours unless otherwise agreed by Lessor and Lessee for the purpose of inspecting the Premises or Building or for the purpose of cleaning, repairing, altering or improving the Premises or Building. Nothing contained in this paragraph 13 shall be deemed to impose any obligation upon Lessor not expressly stated elsewhere in this Lease. When reasonably necessary, Lessor may temporarily close entrances, doors, corridors, elevators or other facilities without liability to Lessee by reason of such closure and without such action by Lessor being construed as an eviction of Lessee or relieve Lessee from the duty of observing and performing any of the provisions of this Lease. Lessor shall have the right to enter Premises for the purpose of showing Premises to prospective tenants for a period of 180 days prior to the expiration of the Lease term. Lessor shall not enter the premises outside of business hours unless communicated in advance to Lessee.
14. **DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY.** If the Premises shall be destroyed or rendered untenable, either wholly or in part, by fire or other unavoidable casualty, Lessor may, at its option, restore the Premises to their previous condition, and in the meantime the rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole thereof; provided, however, that Lessor may in its sole discretion, within thirty (30) days after the happening of such casualty, notify Lessee of its election not to restore said Premises, in which event this Lease shall terminate.
15. **WAIVER OF SUBROGATION.** Notwithstanding anything to the contrary contained herein, Lessor and Lessee do each hereby release and relieve the other from responsibility for and waive their entire claim of recovery for:
  - A) Any loss or damage to the real or personal property of either party located anywhere in the building, and including the building itself, arising out of or incident to the occurrence of any of the perils which may be covered by any casualty insurance policy, with extended coverage endorsement, in common use in the Coeur d'Alene locality,
  - B) Loss resulting from business interruption at the premises or loss of rental income

from the building, arising out of or incident to the occurrence of any of the perils which may be covered by a business interruption insurance policy and by the loss of rental income insurance policy in common use in the Coeur d'Alene locality.

- C) To the extent that such risks under "a" and "b" are in fact covered by insurance, each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party.

**16. LIABILITY INSURANCE.** A certificate of insurance evidencing carriage shall be provided to Lessor at the inception of possession. Lessee shall, at all times during the term hereof and at Lessee's cost and expense, maintain in effect bodily injury and property damage insurance adequate to protect Lessor and naming Lessor as an additional named insured against liability for injury to or death of any person or damage to property in connection with the use, operation or condition of the Premises, in an amount not less than \$1,000,000.00.

**17. ACCIDENTS AND INDEMNITY BY LESSEE.** Lessee shall defend and indemnify Lessor, and save it harmless from and against any and all liability, damages, costs, or expenses, including reasonable attorneys fees, arising from any act, omission, negligence or willful misconduct of Lessee, or the officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors of Lessee in or about the premises, or, arising from any accident, injury, or damage, whatsoever and by whomsoever caused, to any person or property occurring in or about the premises; provided that the foregoing provision shall not be construed to make Lessee responsible for loss, damage, liability or expense resulting from injuries to third parties caused by the gross negligence or willful misconduct of Lessor, or of any officer, contractor, licensee, agent, servant, employee, guest, invitee or visitor of Lessor.

Lessor shall not be liable for any loss or damage to person or property sustained by Lessee, or other person, which may be caused by the building or the premises, or any appurtenances thereto, being out of repair by the bursting or leakage or any water, gas, sewer, or steam pipe, or by theft, or by any act or neglect of any tenant or occupant of the Building, or of any other person, or by any other cause; unless caused by the gross negligence or willful misconduct of Lessor.

**18. ASSIGNMENT AND SUBLETTING.** Lessee shall not assign this Lease, nor any interest herein, and the Lease, or any interest hereunder, shall not be assigned by operation of law, and Lessee will not sublet said Premises to a third party or parties without first obtaining the written consent of Lessor; which consent shall not be unreasonably withheld or delayed. In the event such written consent shall be given, no other subsequent assignment, subrental or subletting shall be made without the prior written consent of Lessor, which consent shall not be unreasonably withheld. It shall be reasonable for Lessor to condition its consent to any requested assignment or subletting upon receipt of a written agreement from both Lessee and Lessee's proposed assignee or sublessee stating that to the extent the rent or other consideration to be paid by the proposed assignee or sublessee exceeds the then-applicable rent called for hereunder, such excess shall be paid directly to the Lessor.

19. **SIGNS.** Subject to Lessor's prior written consent, Lessee may erect and maintain any appropriate and legal signs on the building and premises, at its own expense and remove such signs without damage to the building or premises upon termination of the ease or Lessee's occupancy.

20. **LIENS AND INSOLVENCY.** Lessee shall keep the premises and the building free from any liens arising out of any work performed, materials ordered or obligations incurred by Lessee. If Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of Lessee, then Lessor may cancel and terminate this Lease at Lessor's option.

21. **DEFAULT AND RE-ENTRY.** Except for a default under the preceding paragraph for which immediate right of termination is given Lessor, if Lessee fails to pay when due any amounts due under this Lease, or to perform any other covenant under this Lease within thirty (30) days after written notice from Lessor stating the nature of the default, Lessor may cancel this Lease and re-enter and take possession of premises using all necessary force to do so; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Lessee shall not be deemed to be in default if Lessee shall within said period commence such cure and thereafter diligently prosecute the same to completion. Notwithstanding any retaking of possession by Lessor, Lessee's liability for the rent provided herein shall not be extinguished for the balance of the term of this Lease. Upon such default, cancellation or re-entry, Lessor may elect either:

- A) to terminate this Lease or;
- B) without terminating this Lease, to relet or attempt to relet all or any part of the Premises upon such terms and conditions as Lessor may deem advisable, in which event the rents received on such reletting shall be applied first to the expenses of reletting and collection, including necessary renovation and alteration of the Premises, reasonable attorneys' fees and real estate commissions paid, and thereafter to payment of all sums due or to become due Lessor hereunder.

In either event, liability of Lessee for full rental provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to Lessor any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than the rental herein agreed to, and Lessor may bring an action therefor as such monthly deficiency shall arise. If Lessor elects the latter, it shall have the right to let any other available space in the office building before reletting or attempting to relet the premises, and such action by Lessor shall not relieve Lessee from any of Lessee's obligations hereunder. Lessee hereby waives all claims for damages that may be caused by Lessor's re-entry and taking possession of premises or removing and storing the property of Lessee as provided in this Lease, and Lessee will save Lessor harmless from loss, costs or damages caused to Lessor. Such re-entry shall be considered a forcible entry.

22. **REMOVAL OF PROPERTY.** If Lessee shall fail to remove any of its personal

property from the premises or the building at the termination of this Lease Lessor may, at its option, remove and store said property without liability for loss thereof or damage thereto, such storage to be for the account and at the expense of Lessee. If Lessee does not pay the cost of storing such property after it has been stored for a period of thirty (30) days or more, Lessor, may at its option, sell, or permit to be sold, any or all of such property at public or private sale, in such manner and at such time and place as Lessor shall select. The Lessor shall apply proceeds of such sale first to the cost and expense of said sale, including reasonable attorneys' fees actually incurred, second, to the payment of the costs or charges for storing any such property, third, to the payment of any other obligations which may then be or thereafter become due to Lessor, and fourth, the balance, if any, to Lessee.

23. **OPTION TO RENEW.** Lessee is hereby granted an option to renew this lease for up to (3) three additional periods of twelve (12) months beginning July 1, 2010, upon the same terms and conditions as this lease, except that the lease payment for said renewal period shall increase by three (3) three percent per year. In order to exercise this option to renew, Lessee shall on or before sixty (60) days prior to the termination of this lease, serve upon Lessor a written notice of their intention to renew this lease.
24. **NON-WAIVER.** Waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular rental so accepted regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent of this Lease.
25. **SURRENDER OF POSSESSION.** Upon termination of this Lease, whether by lapse of time or otherwise, Lessee shall promptly and peacefully surrender premises to Lessor.
26. **HOLDOVER.** If Lessee shall, with the written consent of Lessor, hold over after the expiration of the term of this Lease, such tenancy shall be a month-to-month tenancy, which may be terminated with thirty (30) days written notice by either party. During such tenancy the Lessee agrees to pay to Lessor an amount equal to 100% of the lease payment provided for herein, and to be bound by all terms, covenants and conditions of the Lease.
27. **SUBORDINATION TO MORTGAGE.** Lessee agrees that this Lease shall be subordinate to any mortgage that may hereafter be placed by Lessor upon the land and building and all renewals, replacements and extensions thereof; provided that the mortgagee named therein shall agree to recognize this Lease in the event of foreclosure if Lessee is not in default hereunder. If any mortgagee of the Land and Building wishes to have this Lease as a prior lien to its mortgage, the mortgagee shall notify Lessee that this Lease shall be deemed prior to the lien of such mortgage. Within fifteen (15) days of presentation, Lessee shall execute any document which the mortgage document which

may be required to effectuate the provisions of this clause 27 and shall execute estoppel certificates as requested by Lessor.

28. **CONDEMNATION.** If the whole of premises, or if a portion of the facilities in the Building as may be required for the reasonable use of premises, shall be taken by virtue of any condemnation or eminent domain proceeding, this Lease shall automatically terminate as of the date of such condemnation, or as of the date possession is taken by the condemning authority, whichever is earlier. Current rent shall be apportioned as of the date of such termination.

In the event of a partial taking of premises, this Lease shall continue in full force and effect and the rental shall be equitably reduced based on the proportion by which the floor area of premises is reduced. Rent reduction shall be effective on the date of such partial taking.

No award for any partial or entire taking shall be apportioned, and Lessee hereby assigns to Lessor any award which may be made in such taking or condemnation together with any and all rights of Lessee now or hereafter arising; provided, however, that nothing herein shall be deemed to give Lessor any interest in or to require Lessee to assign to Lessor any award made to Lessee for the interruption of or damage to Lessee's business or for Lessee's moving expenses or the value of Lessee's property, if any, located on the premises.

29. **SALE OF BUILDING.** Notwithstanding any other provision of this agreement, the Lessor, in its sole discretion, may choose to sell the building at any time. The Lessee will be given six months notice of the Lessor's intention to sell the property. This lease will automatically terminate and Lessee will surrender possession of the premises to the Lessor at the expiration of the six month notice period.

30. **TAX ON RENTAL.** The rent stated in paragraph 1.e. is exclusive of any sales, business and occupation, or any other tax based upon or measured by rents payable to Lessor hereunder. If during the Lease term any such tax becomes payable by Lessor to any governmental authority, the rent hereunder shall be deemed increased to net Lessor the same rent after payment by Lessor of any such tax as would have been payable to Lessor prior to the imposition of such tax. The foregoing does not apply to income, inheritance, gift or succession taxes payable by Lessor.

31. **NOTICES.** All notices under this Lease shall be in writing and delivered in person or sent by certified mail to Lessor's representative at the same place rent payments are made, and to Lessee at the Premises or such address as may hereafter be designated by either party in writing. Notices mailed shall be deemed given on the date of such mailing.

32. **COSTS AND ATTORNEYS' FEES.** If Lessee or Lessor shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Lessor for the recovery of rent or possession of the Premises, the losing party shall pay the prevailing party reasonable attorneys' fees and costs in such suit.

33. **LANDLORD LIEN.** Lessee hereby grants to Lessor a lien and security interest in Lessee's property located on the Premises. Such property shall be and remain subject to such lien and security interest of Lessor for payment of all rent and other sums agreed to be paid by Lessee herein. Said lien and security interest shall be in addition to and cumulative with the Lessor's liens provided by law. This lease shall constitute a security agreement under the Idaho Uniform Commercial Code ("UCC") so that Lessor shall have and may enforce a security interest including, but not limited to, all fixtures, machinery, equipment, furnishings and other articles of personal property. Lessee shall execute as debtor such financing statement or statements as Lessor may now or hereafter reasonably require in order that such security interest or interests may be perfected pursuant to the UCC. Lessor may, at its election, at any time file a copy of this Lease as a financing statement. Lessor, as secured party, shall be entitled to all of the rights and remedies afforded a secured party under the UCC.
34. **QUIET ENJOYMENT.** Lessor warrants that is has full right to execute and perform the Lease and to grant the estate demised herein, upon payment of rent by Lessee; and upon Lessee's performance of all the covenants, terms and conditions Lessee shall peaceably and quietly hold and enjoy the Premises for the term hereby demised, without hindrance or interruption by the Lessor.
35. **CAPTIONS, CONSTRUCTION, and GOVERNING LAW.** The title to paragraphs of this Lease are for convenience only and shall have no effect upon the construction or interpretation of any part thereof. This Lease shall be construed and governed by the laws of the State of Idaho.
36. **LESSOR'S CONSENT.** Whenever Lessor's consent is required under the terms hereof, such consent shall not be unreasonably withheld.
37. **SUCCESSORS.** All of the covenants, agreements, terms and conditions contained in this Lease shall apply to and be binding upon Lessor and Lessee and their respective heirs, executors, and assigns.
38. **OTHER AGREEMENTS.** This Lease supersedes any and all other agreements whether written or oral which have or may have existed in the past between Lessor and Lessee.
39. **AUTHORITY.** Lessee warrants that he has all power and authority to enter into and execute this Lease and to perform the obligations of Lessee hereunder.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease Agreement on the date first above written.

**LESSOR:**  
**City of Coeur d'Alene**  
**Kootenai County, Idaho**

**LESSEE:**  
**St. Vincent de Paul of Coeur d'Alene**

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

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

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**Renata McLeod, City Clerk**

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



**Kootenai County Task Force On Human Relations****EVERY  
HUMAN  
HAS  
RIGHTS***Committed to the elimination of prejudice and bigotry.*

February 4, 2013

The Honorable Sandi Bloem  
Mayor, City of Coeur d'Alene  
Coeur d'Alene City Council  
710 E Mullan Avenue  
Coeur d'Alene, Idaho 83814

Dear Mayor Bloem and City Council:

We have been encouraged to witness the passage of city ordinances preventing discrimination in housing, jobs and public accommodations based on sexual orientation, gender identity/expression in Sandpoint, Boise and Ketchum, Idaho. We also understand that the cities of Moscow, Pocatello and Idaho Falls have similar ordinances under consideration.

The Kootenai County Task Force on Human Relations Board preamble supports the principle that all persons are created equal and we recognize the dignity and worth of every human being. All law-abiding individuals should enjoy the fruits of freedom and be free from discrimination based on such characteristics as sexual orientation, gender identity/expression. Our city has the opportunity to take yet another major step forward in guaranteeing the fundamental rights of all its residents by the passage of this anti-discrimination ordinance in housing, jobs and public accommodations.

We urge you to join the Idaho cities that have already made their communities more welcome and friendly to all their residents.

Over the past three decades the City of Coeur d'Alene has been recognized and honored throughout the Nation for its uncompromising and courageous stand in opposing those forces who came to our area promoting a doctrine of Neo-Nazism. Coeur d'Alene has been a great friend and landlord to the Human Rights Education Institute in one of the cities' buildings just to name an example of your many efforts on behalf of equality.

The city of Coeur d'Alene in 1990 was the first city in Idaho to receive the distinguished "All American City Award" from the National Civic League (formerly the National Municipal League). The Kootenai County Task Force on Human Relations, on several occasions, has been informed by the staff of the NCL that one of the major reasons for the "All American City Award" to Coeur d'Alene was due to the strong stand the community had taken in promoting human rights.

*Contributions to the KCTFHR are NOT tax deductible*

In 1987, Coeur d'Alene Mayor Raymond Stone, Kootenai County Task Force on Human Relations president and Catholic priest Bill Wassmuth and Kootenai County Undersheriff Larry Broadbent traveled to New York City Hall where the City of Coeur d'Alene accepted the internationally prestigious "Raoul Wallenberg Civic Award" for boldly standing up for human rights. In fact, the Raoul Wallenberg Committee of the United States in presenting the award informed the delegation from Coeur d'Alene that the award had just been established in order to recognize and honor the people of Coeur d'Alene.

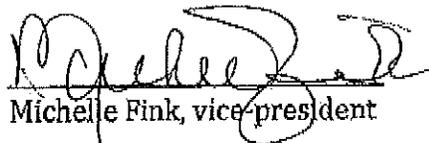
The City of Coeur d'Alene has the opportunity to move forward in advancing the principles we have all promoted for decades. We urge you to stand on the broad shoulders of those who have gone before you in confirming once again the dignity and rights of all our residents and share in this noble legacy.

Let us live up to that wonderful slogan: Coeur d'Alene, "the City with a Heart".

Respectfully,

Kootenai County Task Force on Human Relations Board of Directors

  
Christie Wood, president

  
Michelle Fink, vice-president

  
Ellen Stamosos, treasurer

  
Tony Stewart, secretary

## CITY OF BOISE

**To:** Mayor and Council  
**FROM:** R. Stephen Rutherford  
**ORDINANCE NUMBER:** O-36-12  
**DATE:** November 7, 2012  
**SUBJECT:** Anti-Discrimination Ordinance

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**ACTION REQUIRED:** Approval

**RECOMMENDATION:** Approval

**FISCAL IMPACT/BUDGET IMPLICATIONS:** The resources required to enforce this ordinance will largely depend upon how many complaints are made to the Boise Police Department. The complaints will be received and investigated by the Boise Police Department and the administrative process as well as possible prosecution by the Boise City Attorney's Office. It is anticipated that current staffing will be sufficient to properly administer and enforce the ordinance.

**BACKGROUND:** This ordinance is being proposed by Council President Maryanne Jordan and Council Member Lauren McLean to ensure equal protection for everyone who works and/or lives in the City of Boise. The attached Anti-Discrimination Ordinance prohibits discrimination on the basis of sexual orientation and gender identity/expression in matters of employment, housing and places of public accommodation. The Ordinance has a very important mediation component which may serve to keep a criminal charge from being filed. Should a complaint be filed in court, a violation of the ordinance is a misdemeanor punishable by a fine of up to \$1,000 and/or up to six months in jail. A violation may be reduced to a civil infraction punishable by a \$100 fine plus court costs by a prosecutor if the defendant takes remedial measures, trains employees or otherwise conforms his/her conduct to the satisfaction of the prosecutor.

**ATTACHMENTS:** Ordinance O-36-12 and Summary

ORDINANCE NO. \_\_\_\_\_

BY THE COUNCIL:

CLEGG, EBERLE, JORDAN, MCLEAN,  
QUINTANA AND THOMSON

**AN ORDINANCE ADDING A NEW SECTION TO BOISE CITY CODE TITLE 6, CHAPTER 2, TO PROHIBIT DISCRIMINATORY ACTS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, it is the policy and intent of the City of Boise that no person be denied equal protection of the laws; nor shall any person be discriminated against because of his or her sexual orientation or gender identity/expression; and

**WHEREAS**, state and federal laws prohibit discrimination in the areas of employment, public accommodation, and housing on the basis of race, color, age, sex, national origin, and/or disability, but there are no such protections against discrimination on the basis of sexual orientation or gender identity/expression; and

**WHEREAS**, nothing contained herein should be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this ordinance that all persons are treated fairly and equally in the City of Boise.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF BOISE CITY, IDAHO:**

**Section 1.** The City Code of the City of Boise shall be amended by the addition of a new Chapter 2 to Title 6, entitled Discrimination Prohibited, and to provide as follows:

**Chapter 2, Section 1**

**DISCRIMINATION PROHIBITED**

**Section 6-02-01 PURPOSE AND DECLARATION OF POLICY**

A. In order to ensure that all persons, regardless of sexual orientation and/or gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, the City of Boise has determined that discrimination on the basis of sexual orientation and gender identity/expression must be addressed, and appropriate legislation be enacted.

- B. It is hereby declared that every individual in the City of Boise has the right to work and earn wages through gainful employment, has the right to seek housing, and has the right to enjoy public accommodation and hospitality.
- C. It is hereby declared to be the public policy of the City of Boise to foster the employment of all individuals in accordance with their abilities. Every individual has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of a city by preventing all of the city's citizens from contributing to the cultural, spiritual, social, and commercial life of the community. The contributions of all the citizens of the City of Boise are essential to the City's growth, vitality, and prosperity.
- D. It is the intent of this Chapter that all persons be treated fairly and equally, and it is the express intent of this Chapter to guarantee fair and equal treatment under the law to all people in the City of Boise. The denial of fair and equal treatment under the law due to sexual orientation or gender identity/expression is detrimental to the health, safety, and welfare of the city's citizens, and damages a city's economic well-being.
- E. This Chapter shall be deemed an exercise of the police power of the City of Boise for the protection of the public welfare, prosperity, health and peace of the City of Boise, its residents and the community.
- F. The prohibitions against discriminatory acts as provided for in this ordinance are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. For complaints alleging discrimination on a basis proscribed under state or federal law (e.g. race, color, religious creed, ancestry, age, sex, national origin, and/or disability) the Complainant is advised of his or her right to file a report alleging a violation of Idaho Code section 18-7301 et. seq., and/or his or her right to file a complaint with the Idaho Commission on Human Rights and/or the Federal Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Fair Housing Act of 1968 as amended, or the Americans with Disabilities Act of 1990 as amended.

**Section 6-02-02      DEFINITIONS**

- A. "DENY" includes any act which, directly or indirectly, by any person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment or representation. It also includes, but is not limited to, the requiring of a person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from persons the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of sexual orientation and/or gender identity/expression,

- B. "DISCRIMINATION" is any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord any preferential treatment to any person because of that person's sexual orientation or gender identity/expression.
- C. "FULL ENJOYMENT OF" shall be construed to include, but not be limited to, the right to use, rent or purchase real property, any service, commodity or article of personal property offered or sold by any person or establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.
- D. "GENDER EXPRESSION/IDENTITY" means a gender-related identity, appearance, expression or behavior of an individual regardless of a person's assigned sex at birth.
- E. "HOUSING ACCOMMODATION" is a building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence, or sleeping quarters of its occupants.
- F. "PERSON" shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.
- G. "PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE OR AMUSEMENT" includes, but is not limited to any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution.

- H. "SEXUAL ORIENTATION" is actual or perceived homosexuality, heterosexuality and/or bisexuality.

**Section 6-02-03 PROHIBITED DISCRIMINATORY ACTS**

The following acts are prohibited and shall constitute a misdemeanor:

- A. To deny to any other person because of sexual orientation and/or gender identity/expression the right to work: (a) by failing or refusing to hire, (b) by discharging, (c) by barring from employment, (d) by discriminating against such person in compensation or in other terms or conditions of employment, or (e) otherwise discriminating against an individual with respect to employment.
- B. To deny to or to discriminate against any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.
- C. To deny to or discriminate against any other person because of sexual orientation and/or gender identity/expression in the sale, purchase, lease or rental of any housing accommodation, or to otherwise discriminate in the terms and conditions, maintenance, improvement or repair of any housing accommodation.

**Section 6-02-04 EXCEPTIONS**

- A. Notwithstanding any other provision herein, nothing in this Chapter is intended to alter or abridge other rights, protections, or privileges secured under state and/or federal law. This ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.
- B. This chapter does not apply to:
1. Religious corporations, associations, educational institutions, or societies.
  2. An expressive association whose employment of a person protected by this chapter would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).
  3. The United States government, any of its departments or agencies, or any corporation wholly owned by it; or the state of Idaho or any of its departments, agencies, or political subdivisions, except the City of Boise.
- C. This ordinance shall not apply: (a) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the lessor or a member of his family resides in one (1) of the housing accommodations, or (b) to the rental of a room or rooms in a single family

residential housing accommodation by an individual if he or a member of his family resides therein.

**Section 6-02-05 PENALTY**

- A. A violation of this Chapter is a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1000) and imprisonment in the county jail not to exceed six (6) months or both.
- B. A prosecutor may reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective actions, which may include, but are not limited to the following: sensitivity training for the defendant and/or the defendant's employees; the defendant's agreement to adopt and pursue a policy of nondiscrimination in its practices; and the defendant's agreement to not engage in discriminatory practices in the future. The charge shall be filed as a misdemeanor violation and may only be reduced upon motion of the prosecutor. There shall be no right to a trial by jury for an infraction citation or complaint.
- C. A complaint filed under the provisions of this Chapter must be filed within 180 days of the alleged discriminatory conduct.
- D. Any person who falsely reports a violation of this chapter may be charged with the crime of False Reporting, Boise City Code 6-01-13.

**Section 6-02-06 UNLAWFUL INTIMIDATION, RETALIATION, AND INTERFERENCE**

It shall be unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting, or participating in any manner in the investigation, or in mediation concerning this Chapter.

**Section 6-02-07 PRIVATE RIGHT OF ACTION**

There is no private right of action that is created by this Chapter or money damages available to any person based on this Chapter.

**Section 6-02-08 SEVERABILITY**

If any provision or section of this Ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.

**Section 2.** Nothing in this Ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, and permit issued, or any cause or causes of action existing under the General Ordinances of the City of Boise or the State of Idaho.

**Section 3.** That a summary of this Ordinance, attached hereto as Exhibit A, is approved as to both form and content.

**Section 4.** That this Ordinance shall be in full force and effect January 1, 2013.

**PASSED** by the Council of the City of Boise, Idaho, this \_\_\_ day of \_\_\_\_\_, 2012.

**APPROVED** by the Mayor of the City of Boise, Idaho this \_\_\_ day of \_\_\_\_\_, 2012.

**APPROVED:**

**ATTEST:**

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David H. Bieter  
MAYOR

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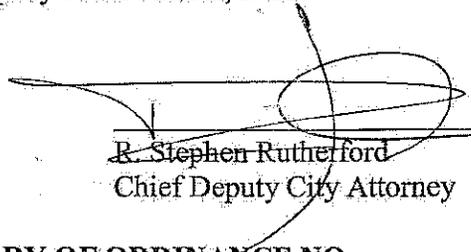
Debbie Broughton  
EX-OFFICIO CITY CLERK

EXHIBIT "A"

STATEMENT OF BOISE CITY ATTORNEY  
AS TO ADEQUACY OF SUMMARY  
OF ORDINANCE NO. \_\_\_\_\_

The undersigned, R. Stephen Rutherford, in his capacity as Chief Deputy City Attorney of the City of Boise City, Idaho, hereby certifies that he is a legal advisor of the City and has reviewed a copy of the attached Summary of Ordinance No. \_\_\_\_\_ of the City of Boise City, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this 9 day of November, 2012.

  
\_\_\_\_\_  
R. Stephen Rutherford  
Chief Deputy City Attorney

SUMMARY OF ORDINANCE NO. \_\_\_\_\_  
OF THE CITY OF BOISE CITY, IDAHO

**PUBLIC NOTICE IS HEREBY GIVEN** that the City of Boise City, Idaho, adopted at its regular meeting of \_\_\_\_\_, \_\_\_\_\_, 2012, that Ordinance No. \_\_\_\_\_ entitled:

**AN ORDINANCE ADDING A NEW SECTION TO BOISE CITY CODE TITLE 6, CHAPTER 2, TO PROHIBIT DISCRIMINATORY ACTS IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION; APPROVING A SUMMARY OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.**

This ordinance creates a new Section 2 to Title 6 of Boise City Code, entitled Discrimination Prohibited. The purpose of the ordinance is to ensure that all persons, regardless of sexual orientation and/or gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations. The ordinance sets forth definitions and lists prohibited discriminatory acts pertaining to: Employment, such as failing or refusing to hire, discharging, barring from employment, discriminating in compensation or in other terms or conditions of employment; Public Accommodation, enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement; and Housing, in terms of the sale, purchase, lease or rental of any housing accommodation within the City of Boise.

The ordinance sets forth exceptions to the ordinance regarding religious organizations; expressive associations whose employment of a person would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); other governmental entities; and rental of a housing containing accommodations for not more than two families living independently of each other, if the lessor or a member of his family resides in one of the housing accommodations, or to the rental of a room or rooms in a single family residential housing accommodation by an individual if he or a member of his family resides therein.

The ordinance sets forth misdemeanor penalties for violation of the ordinance and also provides that a prosecutor may reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective actions. The ordinance makes it unlawful to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting, or participating in any manner in the investigation, or in mediation concerning the ordinance. The ordinance clarifies that there is no private right of action that is created by this ordinance and that if any provision or section of the ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision or section shall be considered separately and apart from the remaining provisions or sections of the ordinance, which shall remain in full force and effect and that the ordinance shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, and permit issued, or any cause or causes of action existing under the General Ordinances of the City of Boise or the State of Idaho.

The ordinance establishes an ordinance effective date and approves this ordinance summary. The effective date of the Ordinance is the date of its passage, approval and publication. A copy of the full text of the Ordinance is available at the City Clerk's office, 150 North Capitol Boulevard, in Boise, Idaho 83701. Examination may be requested in writing or in person during regular business hours of the City Clerk's office, from 8:00 a.m. until 5:00 p.m. pursuant to Section 50-901A(4), Idaho Code.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

City of Boise City, Idaho

ATTEST:

\_\_\_\_\_  
MAYOR  
David H. Bieter

\_\_\_\_\_  
EX-OFFICIO CITY CLERK

**Comments on Proposed  
Coeur d'Alene City Ordinance  
to Prohibit Discrimination Against  
Gay, Lesbian, Bisexual and Transgender People in  
Housing, Employment and Public Accommodations**

1. It is my understanding that Councilman Mike Kennedy intends to ask the City Council to adopt a new city ordinance prohibiting discrimination against gay, lesbian, bisexual, and transgender people in housing, employment, and public accommodations in Coeur d'Alene.
2. It is my understanding that his proposed ordinance will be modeled after the [Boise ordinance](#)<sup>1</sup>.
3. My comments (opinions) below are based on those understandings.
4. Before passage by the Council, a proposed city ordinance that would authorize imposing criminal or civil penalties on violators should first:
  - A. Show that the proposed prohibited conduct is harmful to the public health, safety, morals and welfare; **and**
  - B. Prove persuasively with tangible evidence that the proposed prohibited conduct is likely to occur if the proposed ordinance is not passed; **and**
  - C. Show that existing federal and state laws and regulations do not provide complainants with any available remedy; **and**
  - D. Show with independent documentary evidence that remedies already available from federal or state agencies have been officially sought and have been rejected; **and**
  - E. Show that the proposed ordinance and its enforcement mechanisms have not been and are not likely to be preempted by existing federal and state laws and regulations; **and**
  - F. Identify which City department will be responsible for starting, administering, and enforcing the ordinance; **and**
  - G. Identify which City department will be responsible for prosecuting alleged violations of the ordinance; **and**
  - H. Identify all starting and annual operating costs of such a program to all City departments involved; **and**
  - I. Identify the funding source for all starting and annual operating costs; **and**
  - J. Define the frequency and content of reports which involved City departments will be required to deliver to the City Council to measure the usage and success or failure of the proposed ordinance to achieve its desired results.

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<sup>1</sup> [http://www.cityofboise.org/city\\_clerk/111312/o-36-12.pdf](http://www.cityofboise.org/city_clerk/111312/o-36-12.pdf)

5. In its second recital, the Boise ordinance states, “WHEREAS, state and federal laws prohibit discrimination in the areas of employment, public accommodation, and housing on the basis of race, color, age, sex, national origin and/or disability, but there are **no such protections** against discrimination on the basis of sexual orientation or gender identity/expression...” [Emphasis mine]

While that recital may be technically accurate, it implies the absence of explicit state and federal laws against discrimination on the basis of sexual orientation or gender identity/expression means there are no state and federal remedies already available to address the prohibited discrimination. That is misleading.

In general, the federal agencies have addressed discrimination on the basis of sexual orientation and gender identity/expression in matters of employment, housing and places of public accommodation under the broader prohibited category of sex discrimination.

There are such remedies available through the federal government, and there may also be remedies available through the state government. See the U.S. Equal Employment Opportunity Commission webpage titled [Facts about Discrimination in Federal Government Employment Based on Marital Status, Political Affiliation, Status as a Parent, Sexual Orientation, or Transgender \(Gender Identity\) Status](#)<sup>2</sup>. See also the U.S. Equal Employment Opportunity Commission webpage titled [Sex-Based Discrimination](#)<sup>3</sup>. See also the U.S. Department of Housing and Urban Development webpage titled [Ending Housing Discrimination Against Lesbian, Gay, Bisexual and Transgender Individuals and Their Families](#)<sup>4</sup>. See also the U.S. Department of Housing and Urban Development press release titled [HUD Issues Guidance on LGBT Housing Discrimination Complaints](#)<sup>5</sup>. Finally, see also the U.S. Department of Housing and Urban Development’s [LGBT Final Rule 2012](#)<sup>6</sup>.

These five preceding webpages clearly show that the federal agencies identified have adopted policies and regulations allowing and addressing complaints of discrimination of the types the proposed Coeur d’Alene city ordinance would prohibit. In short, federal remedies are already available.

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<sup>2</sup> <http://www.eeoc.gov/federal/otherprotections.cfm>

<sup>3</sup> <http://www.eeoc.gov/laws/types/sex.cfm>

<sup>4</sup>

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/LGBT\\_Housing\\_Discrimination](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination)

<sup>5</sup>

[http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2010/HUDNo.10-139](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-139)

<sup>6</sup> <http://portal.hud.gov/hudportal/documents/huddoc?id=12lgbtfinalrule.pdf>

If these federal remedies have been formally sought and rejected in Coeur, d'Alene, what were the official reasons for rejection? How will a local ordinance overcome those reasons for rejection?

6. According to a newspaper article dated April 25, 2013, and headlined [Sexual orientation would be protected under CdA law](#)<sup>7</sup>, the Idaho legislature has for seven years rejected efforts to include remedial wording in Idaho's [Human Rights Act](#)<sup>8</sup>. Coeur d'Alene Councilman Mike Kennedy reportedly indicated the proposed ordinance is an effort to "push the momentum toward a statewide law."

A new city ordinance is not an appropriate mechanism to lobby state legislators to amend existing state laws. The more appropriate "push the momentum" device would be a resolution passed by the City Council and delivered to the Legislature. Such a resolution delivers the same message without the attendant costs of enforcing a new ordinance.

It appears that the [Idaho Commission on Human Rights](#)<sup>9</sup> already has the [necessary statutory authority](#)<sup>10</sup> and professional staff<sup>11</sup> to investigate and help resolve the complaints contemplated by the proposed ordinance. Did the Idaho Commission on Human Rights support in whole or in part the legislative solutions proposed over the past seven years? If not, why not?

To whatever extent state law may be insufficient to remedy arbitrary discrimination already prohibited by federal law or regulation, it appears the Idaho Commission on Human Rights has the authority to ask for federal intervention. It is arguable that federal intervention could provide complainants with a more equitable and satisfying resolution than a city ordinance. If the Idaho Commission on Human Rights has refused to act under existing state law **and** has refused to request federal intervention, why?

7. Have allegedly aggrieved parties in Coeur d'Alene filed formal complaints with the appropriate federal agencies and with the Idaho Commission on Human Rights? If not, why not? If so, ask them to produce for public examination the written complaints submitted and the federal agencies' and Idaho Commission on Human Rights written responses to them so the Coeur d'Alene City Council can better evaluate the breadth of the alleged problem and the sufficiency of available remedies.

A lack of diligence by complainants to avail themselves of already available remedies does not create a need for new remedies with their concomitant increased burden on the City of Coeur d'Alene.

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<sup>7</sup> <http://www.spokesman.com/stories/2013/apr/25/sexual-orientation-would-be-protected-under-cda/>

<sup>8</sup> <http://www.legislature.idaho.gov/idstat/Title67/T67CH59.htm>

<sup>9</sup> [http://humanrights.idaho.gov/about\\_us/about\\_us.html](http://humanrights.idaho.gov/about_us/about_us.html)

<sup>10</sup> <http://humanrights.idaho.gov/law.html>

<sup>11</sup> See footnote 9

8. If Boise's ordinance is the template for Coeur d'Alene's proposed ordinance, then enforcement of the new ordinance will fall on the Coeur d'Alene Police Department and prosecution will be by the Coeur d'Alene City Attorney's Office.

What will the initial and recurring annual costs be to both City departments? Boise Chief Deputy City Attorney R. Stephen Rutherford's report to the City Council failed to precisely or even approximately inform the Council of the actual dollar costs. His very vague statement was that the "resources" required would be dependent exclusively on the number of complaints received and that, "It is anticipated that current staffing will be sufficient to properly administer and enforce the ordinance."

What Mr. Rutherford's statement of Fiscal Impact/Budget Implications failed to include was the very identifiable cost of additional initial and recurring training that would have to be delivered to both investigators and prosecutors.

If the proponents of Coeur d'Alene's proposed ordinance are to be believed, there are no existing enforcement officers and prosecutors employed by the City and prepared (trained and certified) to investigate and remedy the discrimination occurring in Coeur d'Alene. Therefore, Coeur d'Alene police officers and prosecutors will have to receive special training in the investigation and prosecution of these types of cases. There will be training costs for police officers used as civil rights violations investigators. They will need some sort of POST certification. There will be administrative costs to ensure the City's ordinance remains timely and consistent with changes to applicable federal and state laws.

### **CONCLUSION**

To the extent that the arbitrary sexual discrimination contemplated by this proposed ordinance exists in Coeur d'Alene, the proposed new ordinance to deal with it should not be passed until the Council is satisfied that all available and arguably much more effective existing federal, state, and local remedies have been officially sought and have failed or are conclusively unlikely to succeed. Then and only then, should the Council draft a proposed ordinance that will adequately and effectively address the existing rather than perceived offenses.

ORDINANCE NO.  
COUNCIL BILL NO. 13-1011

AN ORDINANCE ADOPTING A NEW CHAPTER TO THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, TO PROHIBIT DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION AND PROVIDING THAT A VIOLATION OF THIS ORDINANCE IS A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO \$1,000.00 OR BY IMPRISONMENT NOT TO EXCEED 180 DAYS OR BOTH; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE ARE SEVERABLE; PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND PROVIDING FOR AN EFFECTIVE DATE THEREOF.

WHEREAS, it is the policy and intent of the City of Coeur d'Alene that no person be denied equal protection of the laws; nor shall any person be discriminated against because of his or her sexual orientation or gender identity/expression; and

WHEREAS, state and federal laws prohibit discrimination in the areas of employment, public accommodation, and housing on the basis of race, color, age, sex, national origin, and/or disability, but there are no such protections against discrimination on the basis of sexual orientation or gender identity/expression; and

WHEREAS, nothing contained herein should be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this ordinance that all persons are treated fairly and equally in the City of Coeur d'Alene; and

WHEREAS, after recommendation by the General Services Committee, it is deemed by the Mayor and City Council to be in the best interests of the City of Coeur d'Alene that said amendments be adopted; NOW, THEREFORE,

BE IT ORDAINED, by the Mayor and City Council of the City of Coeur d'Alene:

**SECTION 1.** *That a new Chapter 9.56, entitled **DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMODATIONS PROHIBITED** is added to the Coeur d'Alene Municipal Code as follows:*

**CHAPTER 9.56**  
**DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMODATIONS**  
**PROHIBITED**

**9.56.010: PURPOSE AND DECLARATION OF POLICY:**

A. In order to ensure that all persons, regardless of sexual orientation and/or gender identity/expression enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing, commercial property, and the use of public accommodations, the City of Coeur d'Alene has determined that discrimination on the basis of sexual orientation and gender identity/expression must be addressed, and appropriate legislation enacted.

B. It is hereby declared that every individual in the City of Coeur d'Alene has the right to work and earn wages through gainful employment, has the right to seek housing, and has the right to enjoy public accommodation and hospitality.

C. It is hereby declared to be the public policy of the City of Coeur d'Alene to foster the employment of all individuals in accordance with their abilities. Every individual has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of a city by preventing all of the city's citizens from contributing to the cultural, spiritual, social, and commercial life of the community. The contributions of all the citizens of the City of Coeur d'Alene are essential to the City's growth, vitality, and prosperity.

D. It is the intent of this Chapter that all persons be treated fairly and equally, and it is the express intent of this Chapter to guarantee fair and equal treatment under the law to all people in the City of Coeur d'Alene. The denial of fair and equal treatment under the law due to sexual orientation or gender identity/expression is detrimental to the health, safety, and welfare of the city's citizens, and damages a city's economic well-being.

E. This Chapter shall be deemed an exercise of the police power of the City of Coeur d'Alene for the protection of the public welfare, prosperity, health and peace of the City of Coeur d'Alene, its residents and the community.

F. The prohibitions against discriminatory acts as provided for in this ordinance are intended to supplement state and federal civil rights law prohibiting discrimination in the areas of employment, public accommodations, and housing. For complaints alleging discrimination on a basis proscribed under state or federal law (e.g. race, color, religious creed, ancestry, age, sex, national origin, and/or disability) the Complainant is advised of his or her right to file a report alleging a violation of Idaho Code section 18-7301 et. seq., and/or his or her right to file a complaint with the Idaho Commission on Human Rights and/or the Federal Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Fair Housing Act of 1968 as amended, or the Americans with Disabilities Act of 1990 as amended.

**9.56.020: DEFINITIONS:**

A. "DENY" includes any act which, directly or indirectly, by any person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction, or unequal treatment or representation. It also includes, but is not limited to, the requiring of a person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from persons the admission, patronage, custom, presence, frequenting,

dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of sexual orientation and/or gender identity/expression,

B. “DISCRIMINATION” is any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person’s actual or perceived sexual orientation or gender identity or because of a person’s association with any such person. Discrimination shall not be interpreted to require or to grant or accord any preferential treatment to any person because of that person’s sexual orientation or gender identity/expression.

C. “FULL ENJOYMENT OF” shall be construed to include, but not be limited to, the right to use, rent or purchase real property, any service, commodity or article of personal property offered or sold by any person or establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular sexual orientation and/or gender identity/expression to be treated as not welcome, accepted, desired or solicited.

D. “GENDER EXPRESSION/IDENTITY” means a gender-related identity, appearance, expression or behavior of an individual regardless of a person's assigned sex at birth.

E. “HOUSING ACCOMMODATION” is a building or portion of a building, whether constructed or to be constructed, that is or will be used as the home, domicile, residence, or sleeping quarters of its occupants.

F. “PERSON” shall mean any natural person, firm, corporation, partnership or other organization, association or group of persons however arranged.

G. “PLACE OF PUBLIC RESORT, ACCOMMODATION, ASSEMBLAGE OR AMUSEMENT” includes, but is not limited to any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal services, or for public conveyance or transportation on land, water or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation or public purposes, or public halls, public elevators and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, provided that where public use is permitted that use shall be covered by this section; nor shall

anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution.

H. "SEXUAL ORIENTATION" is actual or perceived homosexuality, heterosexuality and/or bisexuality.

**9.56.030: PROHIBITED DISCRIMINATORY ACTS:**

The following acts are prohibited and shall constitute a misdemeanor:

A. To deny to any other person because of sexual orientation and/or gender identity/expression the right to work: (a) by failing or refusing to hire, (b) by discharging, (c) by barring from employment, (d) by discriminating against such person in compensation or in other terms or conditions of employment, or (e) otherwise discriminating against an individual with respect to employment.

B. To deny to or to discriminate against any person because of sexual orientation and/or gender identity/expression the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

C. To deny to or discriminate against any other person because of sexual orientation and/or gender identity/expression in the sale, purchase, lease or rental of any housing accommodation, or to otherwise discriminate in the terms and conditions, maintenance, improvement or repair of any housing accommodation.

**9.56.040: EXCEPTIONS:**

A. Notwithstanding any other provision herein, nothing in this Chapter is intended to alter or abridge other rights, protections, or privileges secured under state and/or federal law. This ordinance shall be construed and applied in a manner consistent with First Amendment jurisprudence regarding the freedom of speech and exercise of religion.

B. This chapter does not apply to:

1. Religious corporations, associations, educational institutions, or societies.
2. An expressive association whose employment of a person protected by this chapter would significantly burden the association's rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000).
3. The United States government, any of its departments or agencies, or any corporation wholly owned by it; or the state of Idaho or any of its departments, agencies, or political subdivisions, other than the City of Coeur d'Alene.

C. This ordinance shall not apply: (a) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of

each other, if the lessor or a member of his family resides in one (1) of the housing accommodations, or (b) to the rental of a room or rooms in a single family residential housing accommodation by an individual if he or a member of his family resides therein.

**9.56.050: UNLAWFUL INTIMIDATION, RETALIATION, AND INTERFERENCE:**

It shall be unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, for assisting, or participating in any manner in the investigation, or in mediation concerning this Chapter.

**9.56.060: PENALTY:**

A. A violation of this Chapter is a misdemeanor, punishable as provided in Municipal Code Chapter 1.28..

B. A prosecutor may reduce the violation to an infraction, payable by a \$100 fine, if the defendant engages in corrective actions, which may include, but are not limited to the following: sensitivity training for the defendant and/or the defendant's employees; the defendant's agreement to adopt and pursue a policy of nondiscrimination in its practices; and the defendant's agreement to not engage in discriminatory practices in the future. The charge shall be filed as a misdemeanor violation and may only be reduced upon motion of the prosecutor. There shall be no right to a trial by jury for an infraction citation or complaint.

C. Any person who falsely reports a violation of this chapter is guilty of a misdemeanor.

**9.56.070: PRIVATE RIGHT OF ACTION:**

There is no private right of action that is created by this Chapter or money damages available to any person based on this Chapter.

**SECTION 2.** All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 3.** Neither the adoption of this ordinance nor the repeal of any ordinance shall, in any manner, affect the prosecution for violation of such ordinance committed prior to the effective date of this ordinance or be construed as a waiver of any license or penalty due under any such ordinance or in any manner affect the validity of any action heretofore taken by the City of Coeur d'Alene City Council or the validity of any such action to be taken upon matters pending before the City Council on the effective date of this ordinance.

**SECTION 4.** The provisions of this ordinance are severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the

legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause sentence, subsection, word, or part had not been included therein, and if such person or circumstance to which the ordinance or part thereof is held inapplicable had been specifically exempt therefrom.

**SECTION 5.** After its passage and adoption, a summary of this Ordinance, under the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Coeur d'Alene, and upon such publication shall be in full force and effect.

APPROVED, ADOPTED and SIGNED this 4<sup>th</sup> day of June, 2013.

---

Sandi Bloem, Mayor

ATTEST:

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Renata McLeod, City Clerk

SUMMARY OF COEUR D'ALENE ORDINANCE NO.

*Adding a new Chapter 9.56, entitled **DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMODATIONS PROHIBITED** to the Coeur d'Alene Municipal Code*

AN ORDINANCE ADOPTING A NEW CHAPTER TO THE MUNICIPAL CODE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, TO PROHIBIT DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMMODATIONS BASED UPON SEXUAL ORIENTATION AND GENDER IDENTITY/EXPRESSION AND PROVIDING THAT A VIOLATION OF THIS ORDINANCE IS A MISDEMEANOR PUNISHABLE BY A FINE OF UP TO \$1,000.00 OR BY IMPRISONMENT NOT TO EXCEED 180 DAYS OR BOTH; PROVIDING REPEAL OF CONFLICTING ORDINANCES; PROVIDING SEVERABILITY. THE ORDINANCE SHALL BE EFFECTIVE UPON PUBLICATION OF THIS SUMMARY. THE FULL TEXT OF THE SUMMARIZED ORDINANCE NO. \_\_\_\_\_ IS AVAILABLE AT COEUR D'ALENE CITY HALL, 710 E. MULLAN AVENUE, COEUR D'ALENE, IDAHO 83814 IN THE OFFICE OF THE CITY CLERK.

---

Renata McLeod, City Clerk

## STATEMENT OF LEGAL ADVISOR

I, Warren J. Wilson, am a Deputy City Attorney for the City of Coeur d'Alene, Idaho. I have examined the attached summary of Coeur d'Alene Ordinance No. \_\_\_\_\_, **DISCRIMINATION IN HOUSING, EMPLOYMENT AND PUBLIC ACCOMODATIONS PROHIBITED**, and find it to be a true and complete summary of said ordinance which provides adequate notice to the public of the context thereof.

DATED this 4<sup>th</sup> day of June, 2013.

---

Warren J. Wilson, Chief Deputy City Attorney

**GENERAL SERVICES COMMITTEE  
STAFF REPORT**

**DATE:** May 22, 2013

**FROM:** Mike Gridley – City Attorney

**SUBJECT:** Pedestrian tunnel easement for 401 Front Avenue

---

**DECISION POINT:**

Should the city approve an underground easement for the construction and maintenance of a pedestrian tunnel under the Front Avenue sidewalk right-of-way to access the property at 401 Front Avenue?

**HISTORY:**

The reconstruction of Front Avenue has had an impact on the property located at 401 Front Avenue (currently the Bank of America building). One way to mitigate the impact is to allow the owner of the property, Blackridge Properties, LLC, to construct a pedestrian tunnel from the new McEuen Park parking garage to the property. The tunnel would be similar to the tunnel that the city allowed under Ironwood Drive. The tunnel and all associated costs would be borne by the owner of the property. There would be no impact to Front Avenue or the sidewalk as the tunnel would be constructed before the street and sidewalk are installed.

**FINANCIAL ANALYSIS:**

There is no financial impact to the city. All costs are borne by the property owner.

**PERFORMANCE ANALYSIS:**

Citizens parking in the new garage will benefit by having underground access to the property. There is no cost to the city and the tunnel may help mitigate the impact of the street reconstruction on the property.

**DECISION POINT/RECOMMENDATION:**

Council should approve the easement for an underground tunnel at 401 Front Avenue.

RESOLUTION NO. 13-035

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING AN EASEMENT AGREEMENT FOR 401 FRONT AVENUE PEDESRIAN TUNNEL WITH BLACKRIDGE PROPERTIES, LLC.

WHEREAS, it is recommended that the City of Coeur d'Alene enter into an Easement Agreement with Blackridge Properties, LLC, for a pedestrian tunnel access to 401 Front Avenue pursuant to terms and conditions set forth in an agreement, a copy of which is attached hereto as Exhibit "1" and by reference made a part hereof; 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 agreement; NOW, THEREFORE,

BE IT RESOLVED, by the Mayor and City Council of the City of Coeur d'Alene that the City enter into an Easement Agreement for a pedestrian tunnel access to 401 Front Avenue, in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreement to the extent the substantive provisions of the agreement remain intact.

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

DATED this 4<sup>th</sup> day of June, 203.

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

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

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

ROLL CALL:

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

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

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

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

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

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

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

## EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this 4<sup>th</sup> day of June, 2013, by and between the **CITY OF COEUR D'ALENE**, Kootenai County, State of Idaho, a municipal corporation under and pursuant to the laws of the State of Idaho, by and through its Mayor and City Clerk, hereinafter referred to as the "Grantor," and **BLACKRIDGE PROPERTIES, LLC**, hereinafter referred to as the "Grantee.

WITNESSETH:

### I.

For good and valuable consideration, the Grantor does hereby grant, assign, and set over to the Grantee, its successors and assigns, a perpetual underground easement for the construction and maintenance of a pedestrian tunnel under the Front Avenue sidewalk right-of-way, more particularly described as a Tunnel for the uses and purposes of foot travel and foot traffic to the 401 Front building, a building owned by the grantee, from the McEuen Park parking garage that is contemplated to be erected upon the adjoining land, said tunnel to be 9' in height, 2' below the surface and extend under the street and sidewalk on Front Street at the location described in **Exhibit "A"**, attached hereto and incorporated herein.

### II.

The Grantee does hereby agree to save, hold harmless, and indemnify the Grantor from any and all liability, loss, or damage that may arise as a result of any actions, claims, damage, costs, and expense from the construction, use, maintenance or operation of the pedestrian tunnel easement.

### III.

1. The Grantee shall be responsible for all costs of construction and maintenance of the pedestrian tunnel and accessories.
2. The Grantee agrees to construct the tunnel in a manner approved by the City of Coeur d'Alene Engineering Director and in compliance with all existing codes then adopted by the City of Coeur d'Alene. The Grantee shall have the right to utilize the surface as may be necessary for the purposes of constructing the tunnel, subject to the Grantee returning the surface of said property after construction to a condition that is acceptable unto the Engineering Department of the City of Coeur d'Alene, for and on behalf of the Grantor, City of Coeur d'Alene.
3. The Grantee does further agree to release the Grantor from any claim for damages or replacement cost of said pedestrian tunnel which may be occasioned by any future reconstruction of Front Street.

4. In the event there is a need for surface reentry for the purposes of maintenance of the tunnel, the CITY grants such conditional right of entry from the surface for said purpose, subject to the CITY approving by and through its appropriate Department, the Plans and Specifications therefor, and including the Plans and Specifications for the restoration of the surface upon completion thereof.
5. The Grantee does further agree and covenant with the Grantor to perform said work in a satisfactory and workmanlike manner, and in a manner which will not damage adjoining property, whether real or personal, and will at all times conduct the operation in such a manner as to preserve the lateral support for adjoining property.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hand the day and year first above written.

**CITY OF COEUR D'ALENE,  
GRANTOR**

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

ATTEST

\_\_\_\_\_  
Renata McLeod, City Clerk

**BLACKRIDGE PROPERTIES, LLC  
GRANTEE**

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

STATE OF IDAHO )  
 ) ss.  
County of Kootenai )

On this \_\_\_\_ day of June, 2013, before me, a Notary Public, personally appeared **Sandi Bloem** and **Renata McLeod**, known to me to be the Mayor and City Clerk, respectively, of the City of Coeur d'Alene that 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 June, 2013, before me, a Notary Public, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, of **BLACKRIDGE PROPERTIES, LLC**, and the person who executed the foregoing instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company 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 \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Easement Description  
Front Avenue Tunnel

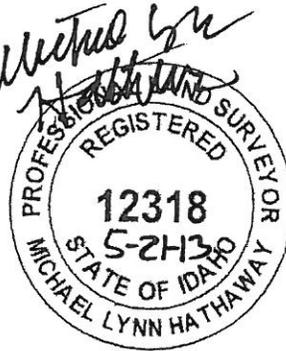
That portion of existing City of Coeur d'Alene right of way known as Front Avenue which is south of and adjacent to Lot 10, Block Q of the Plat of Coeur d'Alene and Kings Addition as recorded in Book C of Plats, Page 144, records of Kootenai County, located in Section 13, Township 50 North, Range 4 West, Boise Meridian, City of Couer d' Alene, Idaho described as follows:

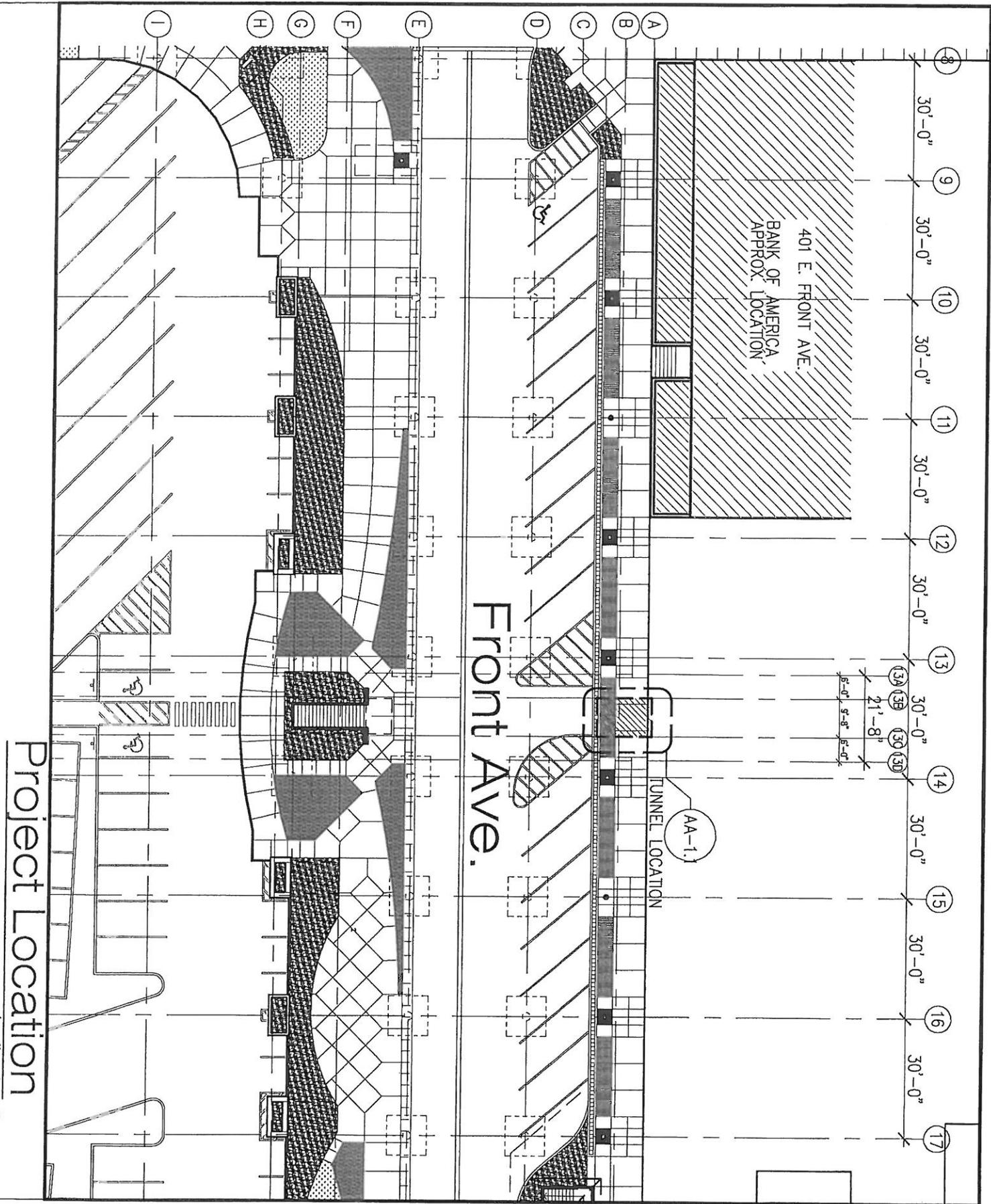
**COMMENCING** at the southeast corner of said Block Q, said point being on the northerly right of way of said Front Avenue; thence along said northerly right of way and the south line of said Block Q, North 87°36'41" West a distance of 129.04 feet to the **TRUE POINT OF BEGINNING**;

Thence South 02° 23' 19" West for a distance of 12.00 feet;  
Thence North 87° 36' 41" West for a distance of 12.00 feet;  
Thence North 02° 23' 19" East a distance of 12.00 feet to said northerly right of way;  
Thence along said northerly right of way, South 87° 36' 41" East a distance of 12.00 feet to the **TRUE POINT OF BEGINNING**;

Said easement description is also limited vertically between elevation 2133.00 and 2149.00. Said elevations are based on NGVD 29 Vertical Datum.

Containing 144 square feet.





Project Location

Scale=1/32"=1'-0"

**Blackridge Prop. LLC**  
**McEuen Tunnel**  
 Coeur d'Alene, ID  
 RESOLUTION NO. 13-035

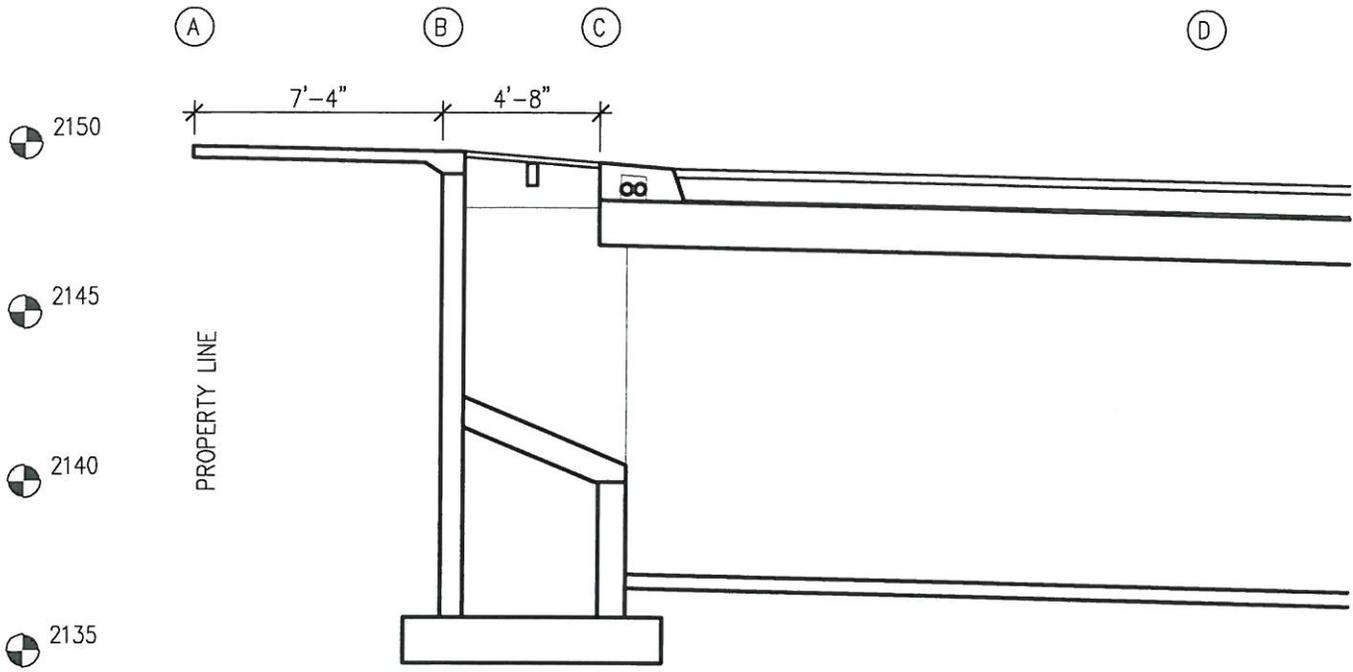
SHEET NO.  
**AA-1**  
 reference sheet:  
 PG-A2.1B

**MILLERSTAUFFER**  
 ARCHITECTS  
 Date: 05.15.2013

601 FRONT AVE. STE. 201  
 COEUR D'ALENE, ID 83814  
 PH 208+664-1773  
 FAX 208+667-3174

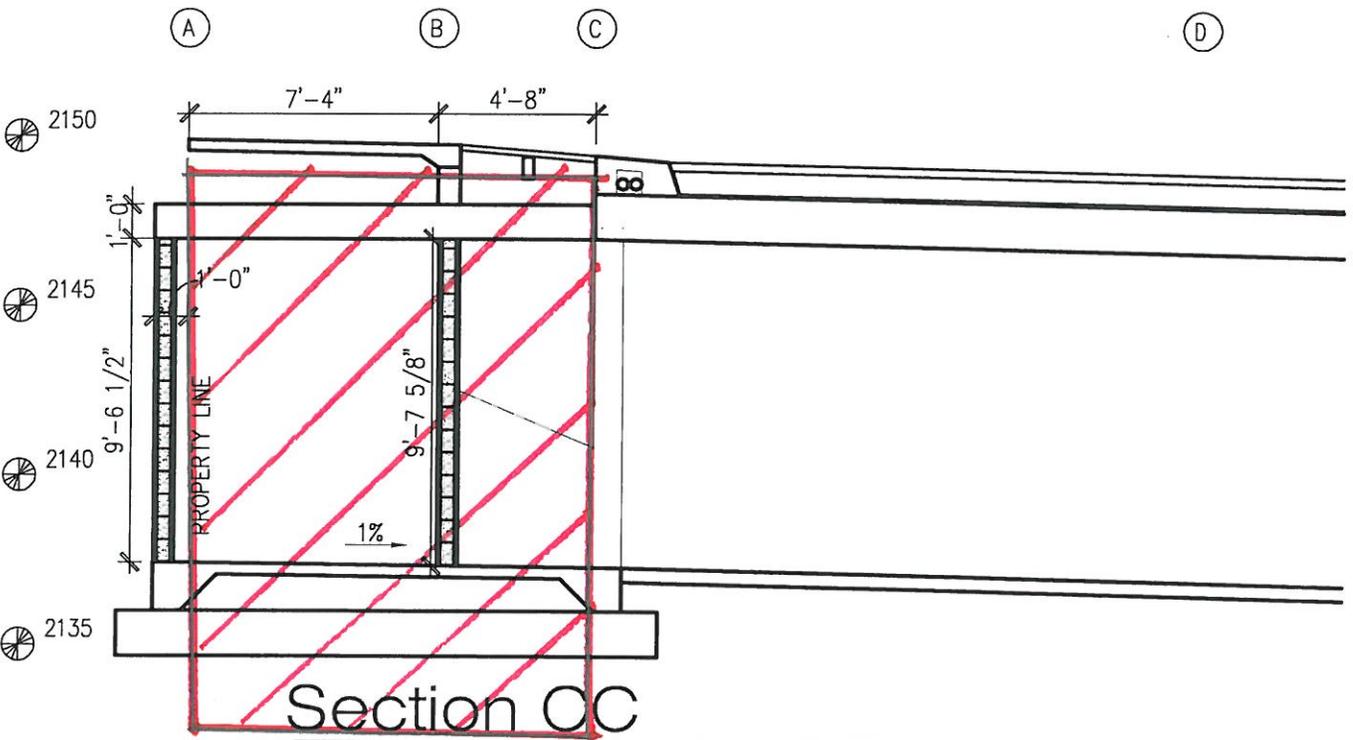


EXHIBIT "A"



Section BB

Scale: 3/16" = 1'-0"



Section CC

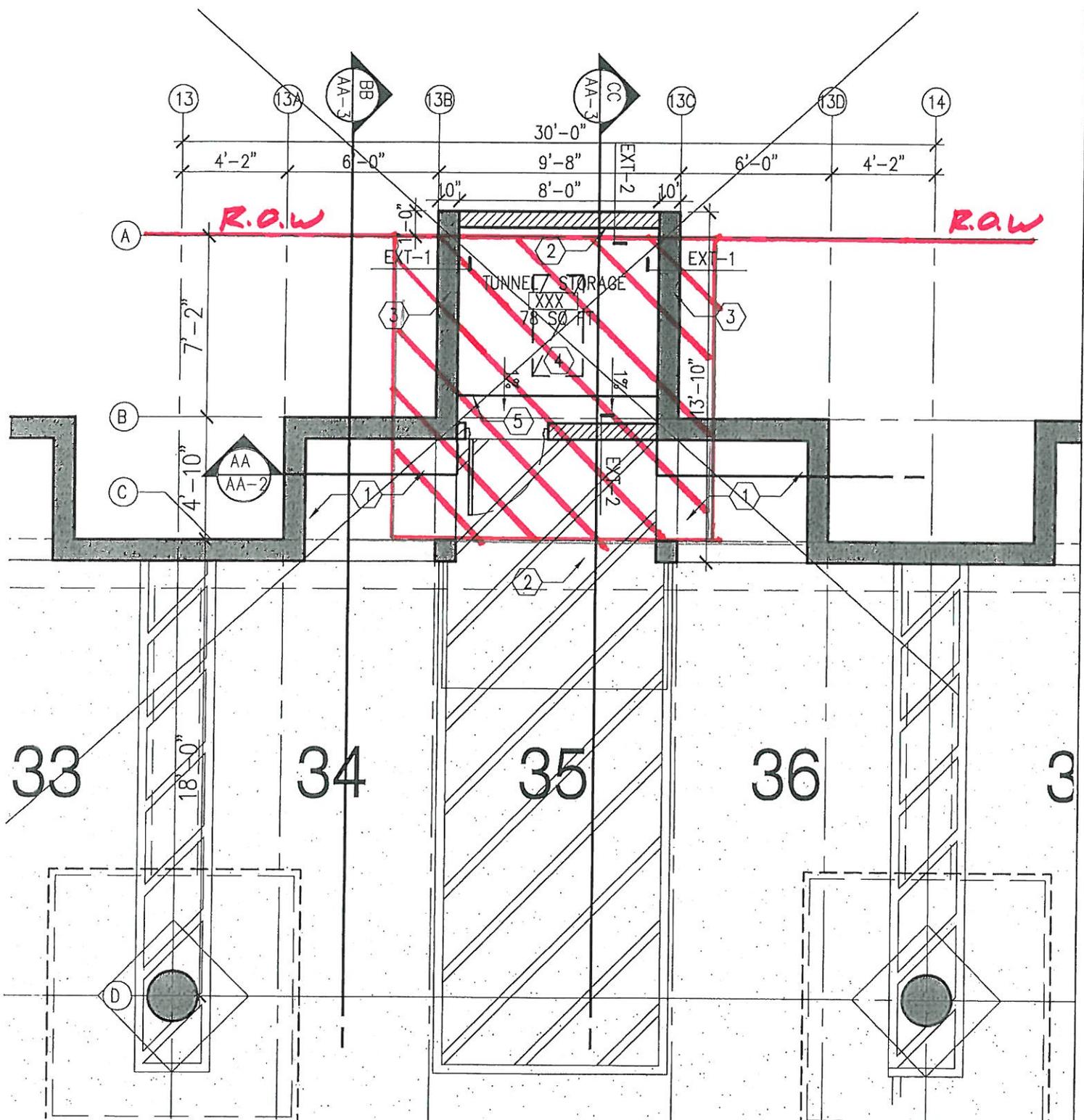
Scale: 3/16" = 1'-0"

Blackridge Prop. LLC  
 McEuen Tunnel  
 Coeur d'Alene, ID

SHEET NO.  
 AA-3  
 reference sheet:  
 PG-A2.1B

Date: 05.15.2013

**MILLER STAUFFER**  
 ARCHITECTS  
 601 FRONT AVE. STE. 201  
 COEUR D'ALENE, ID 83814  
 PH 208+664-1773  
 FAX 208+667-3174



**Keynotes**

- 1. VENTILATION SHAFT
- 2. 8x8x16 CMU INFILL WALL
- 3. CONCRETE WALL
- 4. LIGHT ABOVE
- 5. HOLLOW METAL DOOR

**Floor Plan**

Scale: 3/16" = 1'-0"

**Blackridge Prop. LLC**  
**McEuen Tunnel**  
 Coeur d'Alene, ID

SHEET NO.  
**AA-1.1B**  
 reference sheet:  
 PG-A2.1B

Date: 05.15.2013

**MILLERSTAUFFER**  
 ARCHITECTS  
 601 FRONT AVE. STE. 201  
 COEUR D'ALENE, ID 83814  
 PH 208+664-1773  
 FAX 208+667-3174

EXHIBIT "A"

RESOLUTION NO. 13-035

OTHER BUSINESS

INFORMATION SECTION

Including

Correspondence

Board, Commission, Committee Minutes

**May 28, 2013**  
**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  
Troy Tymesen, Finance Director  
Jon Ingalls, Deputy City Administrator  
Warren Wilson, Deputy City Attorney  
Sid Fredrickson, WW Superintendent  
Terry Pickel, Asst. Water Supt.

**Item 1 Declaration of Emergency, Authorization to Dispense with Bid Requirement  
Consent Calendar**

Terry Pickel, Assistant Water Superintendent, presented a request for Council to authorize the Mayor to issue a Declaration of Emergency as allowed by Idaho Code and dispense with bid requirements for emergency purchasing for the reason that following normal bid procedures would not allow staff to get the Landings Well back online in time to meet the peak summer demand.

Mr. Pickel explained in his staff report that the Landings Well was recently rebuilt by RC Worst as routine maintenance under the Water Department's Bi-annual Well Rehabilitation Program. Unfortunately, only a month after repairs were completed, the Landings Well pump has catastrophically failed due to an unknown cause at this time. The level of destruction will require complete replacement of the entire pump assembly. Staff is attempting to ascertain whether there is any damage to the pump electrical system and the SCADA control system which may require additional repairs if there is damage. As summer is approaching, the department will be in need of this well to meet the peak summer demands. Idaho Code 67-2808 allows for emergency sole source expenditures. The staff report also stated that under IDAPA 58.01.08, the public water system must provide sufficient capacity to meet fire flow and peak demands to protect the public health of the system's customers. Without the Landings Well being online by early July, the potential for low pressure conditions under 20 psi exists, which is identified under the IDAPA Rule as a possible health risk and a violation of the rule. The water system will also not be able to meet peak demands. Water curtailment measures may be necessary to reduce the potential risk without immediate replacement.

Mr. Pickel explained the typical bid requirements and timeline and said that the city would be looking at a minimum of five weeks before it can even order the materials. As it stands, even with council approval to waive the bid requirements, they are looking at probably three weeks to get the materials in, and probably four to five weeks to get the well up and running. The contractor and insurance reps have been working well with them.

Councilman Gookin asked if they knew what had happened yet. Mr. Pickel said they don't know definitively, but they have some theories. They do not believe the motor is salvageable but the insurance company wants to at least look at it. They are still waiting to get the site released so they can get everything cleaned up. There was a lot of smoke damage to the building and Ted Lantzy of the Building Department will do a structural inspection and an engineering firm will look at the motor drive panel and SCADA panel to make sure they aren't damaged.

**MOTION: Motion by McEvers, seconded by Gookin, to recommend Council approval of Resolution No. 13-\_\_\_ authorizing the Mayor to issue a Declaration of Emergency for the Landings Well Pump replacement and dispense with bid requirements for emergency purchasing of all related equipment, materials, supplies, and services as allowed by Section 67-2808 of the Idaho Code. Motion carried.**

**Item 2            Encroachment Agreement for Seventh and Sherman  
Consent Calendar**

Warren Wilson, Deputy City Attorney, presented a request for council approval of an encroachment agreement to allow Seventh and Sherman, LLC to install landscaping areas on the sidewalk on Seventh Avenue.

Mr. Wilson explained in his staff report that the applicant has recently completed the construction of the new building at Seventh & Sherman. As part of the Design Review process, the applicant proposed installing landscaping along Seventh Avenue to meet the design review criteria. The applicant is now ready to install the landscaping areas and needs the city to approve the encroachment agreement that will authorize the installation of the planters. Under the agreement, the applicant bears all costs for installation and removal of the proposed encroachment.

Mr. Wilson's staff report further noted that there is sufficient sidewalk width in the area to allow the encroachment. The length of the landscaping would be approximately 43 feet.

Councilman Gookin asked Mr. Wilson to explain how an encroachment agreement is different from an easement. Mr. Wilson said that an encroachment agreement is more akin to a license where the city allows someone to put something on city property, and if the city requires them to move it, they would receive 90 days' notice.

**MOTION: Motion by Gookin, seconded by McEvers, to recommend that Council approve Resolution No. 13-\_\_\_, approving the encroachment agreement to allow Seventh and Sherman, LLC to install landscaping areas on the sidewalk on Seventh Avenue. Motion carried.**

**Item 3            Acceptance of Offer of Loan WW #1307 from Idaho Department of Environmental  
Quality Clean Water State Revolving Fund for the WWTP Phase 5C.1 Project  
Consent Calendar**

Sid Fredrickson, Wastewater Superintendent, presented a request for council acceptance of a loan offer from the State of Idaho Department of Environmental Quality Clean Water State Revolving Fund in the amount of \$7,700,000 for the design and construction of the City of Coeur d'Alene Wastewater Department Phase 5C.1, Initial Tertiary Membrane Filtration and Nitrification Improvements.

The staff report explained that Phase 5C.1 is the next phase of improvements to the Coeur d'Alene Wastewater Treatment Plant that will allow for compliance with new NPDES Permit biological nutrient limits (particularly phosphorus). The project is designed and currently soliciting bids for construction. The terms of the loan are very advantageous to the City to fund this project, with an interest rate of 2.00% and a term of 20 years. The loan will be repaid with the issuance of revenue bonds. The City has recently received the authority to incur debt for this project through judicial confirmation.

Mr. Fredrickson said that they will have bond council review the loan offer and prepare a resolution for council's adoption. They will need to fill out the loan documents, including a timeline schedule and system classifications.

**MOTION: Motion by McEvers, seconded by Gookin, to recommend Council approval of Resolution No. 13-\_\_ accepting the Offer of Loan #1307 and authorizing the Mayor to sign said offer. Motion carried.**

The meeting adjourned at 4:10 p.m.

Respectfully submitted,

Amy C. Ferguson  
Public Works Committee Liaison

# CORRESPONDENCE



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Coeur d'Alene Field Office  
3815 Schreiber Way  
Coeur d'Alene, Idaho 83815



In Reply Refer To:  
8300(IDC010)

MAY - 7 2013

Mayor Sandi Bloem and City Council  
City of Coeur d'Alene  
City Hall  
710 E. Mullan Ave.  
Coeur d'Alene, ID 83814

Dear Mayor Bloem and Council Members:

The Bureau of Land Management (BLM) greatly appreciates the efforts that the City of Coeur d'Alene (City) directs towards the recreational needs of the public. When one looks at the tremendous progress in providing recreational programs and infra-structure for a burgeoning population, the City should be congratulated for that effort. The BLM also is very sensitive to the increasing recreational needs of the City, Kootenai County and the greater Spokane area, especially around Coeur d'Alene Lake.

There is certainly a growing demand for access to Coeur d'Alene Lake by the boating public. This is clearly the case when we see our Blackwell Island and Mineral Ridge launch areas fill to capacity most weekends during the summer months. Certainly the temporary closure of the 3<sup>rd</sup> Street launch and parking area during the peak of the boating season will have an impact on this access. In all likelihood, our Blackwell Island and Mineral Ridge launch and parking areas will see an even greater increase in use this summer as a result. However, both of these areas are already utilized to their maximum capacities during the summer months.

The BLM endorses efforts by the City, as well as by other entities, to expand access with attendant parking to Coeur d'Alene Lake for the boating public. As part of our multiple use mandate, the BLM looks favorably at future acquisitions and developments that would provide increased public recreational access with necessary parking to Coeur d'Alene Lake.

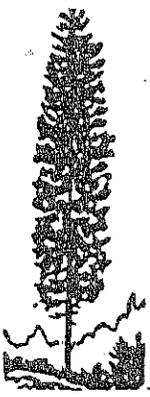
If either myself or my staff can be of further assistance in advancing this effort, please do not hesitate to contact me at (208) 769-5038.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Pavlat', written in a cursive style.

Kurt Pavlat  
Field Manager

cc: (1) Mike Gridley, City Attorney  
(2) Doug Eastwood, Parks Director  
(3) Wendy Gabriel, City Administrator



Mayor Bloem

## Natural Resources Committee

April 10, 2013

Mayor Bloem and City Council  
City of Coeur d'Alene  
City Hall  
710 E. Mullan Ave.  
Coeur d'Alene, Idaho 83814

**RE: Transfer of Old Hwy 10 (now Lake Cd'A Drive) from ITD to City of Cd'A**

Dear Mayor Bloem and Distinguished Council Members:

After lengthy discussion at the past monthly meeting of the 4C Natural Resources Committee, and upon a motion and second, the group acted to recommend to the Coeur d'Alene City Council that the former US-10/I-90 highway, now known as Coeur d'Alene Lake Drive, be transferred to the city as proposed by the Idaho Department of Transportation. This would provide over 5 miles of additional waterfront property on the north side of the lake adjacent to the city with its popular recreational trail and numerous beaches and pocket park sites to be identified as a part of the "Lake City."

There are a number of advantages, but one the group spoke of would be to pursue possible plans for a new public boat launch somewhere along this 5 mile waterfront corridor as has been discussed at different times over nearly 30 years. The members present unanimously agreed to actively support the city in its decision in this regard. It was noted that it would take a cooperative multi-agency and department effort, along with active boating community participation to facilitate the funding and construction of a new all-purpose boat ramp for both the area-wide public and commercial users, and could include a crane pad for larger boats and sailboats, which is also a need for lake access. The group agreed that even with the 3<sup>rd</sup> Street Launch remaining in place, as in the current McEuen Park plans, the trailer parking limitations and downtown congestion on summer weekends, a new, more accessible public boat launch at the north end of the lake is critical as demands continue to increase from the broader boating public.

Your vision in this matter would be timely and it would be prudent to take this opportunity to expand and enhance the city's presence on the north shore of our lake. The members would strongly support the city's positive action in this regard.

Best regards,

For the 4C Natural Resources Committee  
Sandy Emerson  
Issue and Program Coordinator  
(208) 769-7046

#### **4 COUNTY NATURAL RESOURCES COMMITTEE**

The 4C Natural Resources Committee, now known as the 4C Natural Resources Committee is an informal group of agency officials, local department managers and supervisors, and interested citizens that meet once a month to discuss natural resource matters, issues, concerns, and opportunities to remain informed on related topics and to broaden members understanding of these issues affecting the North Idaho area.

Originally started during Governor Cecil Andrus' administration as a way to improve communication and efficiencies between and among state and federal agencies doing projects affecting natural resources in local communities, the stated intent was to bring common issues to the table with programs and announcements so that appropriate action could be discussed, recommended, and reviewed as the group felt advisable. The four counties of Kootenai, Shoshone, Benewah and Latah have long shared a mutual interest in improving conditions and lake and river access to Lake Coeur d'Alene and its boat accessible tributaries and chain lakes. In recent years most participants are from Kootenai County, but as issues arise surrounding interests are welcome and included.

The group serves as a forum for timely information from those involved as well as from presenters at luncheon programs generally about studies, actions, and proposals impacting the natural resources of the area. The group has often made recommendations to legislators and government officials based on discussion of issues raised at the meetings. The organization is proud of the continuity of the group and its activities over the past 30+ years of service in spite of having no dues or organizational ties to any other group. This has been possible because various agencies and departments send representatives monthly, and in the past donated production and mailing costs, now maintained by volunteers through the internet. Meetings are the 1<sup>st</sup> Wednesday of each month at the Iron Horse Restaurant in Coeur d'Alene at noon. Meeting notes are kept for reference and members in attendance may make motions to recommend action or support programs, projects, or activities. The group has recognized individuals, agencies, and entities with interest in areas of natural resource protection, preservation, or enhancement. Recreational opportunities in the Idaho Panhandle are particularly of interest and many actions and endeavors have been successfully supported and sometimes initiated with letters and grant sponsorship. Examples are initial support and endorsement for the Route of the Hiawatha bike trail on the Idaho-Montana state line, early support for the Trail of the Coeur d'Alenes, funding expediting and enhancement for the BLM Blackwell Island land acquisition and boat launch construction, funding support for other BLM land acquisitions including Blue Creek Bay and Windy Bay, support for Cougar Bay land acquisitions and habitat protection, grants and project development for a multi-agency watershed protection road relocation project on the Blue Creek drainage and for the Northern Pacific trail segment between the Hale Fish Hatchery and Lookout Pass that included a vault toilet and signs.

The informal organization has a Program and Issues Chair or Co-chairs, but no formal election of officers at the present time, and meeting notes are taken but no formal minutes.

Further information:

Sandy Emerson (208) 769-7046 or Geoff Harvey (208)769-1422

Current Program and Issues Co-chairs