Any citizen who wishes to address the Council shall first be recognized by the Mayor, and shall then give his/her name and address for the record. If a citizen wishes to read documentation of any sort to the Council, he/she shall first seek permission from the Mayor. A three (3) minute time limitation is requested for Council presentations.

City Hall is accessible to persons with disabilities. Program access accommodations can be provided with three (3) days’ advance notice by contacting Skyler Beebe at sbeebe@pocatello.us; 208.234.6248 or 5815 South 5th Avenue, Pocatello, Idaho.

The purpose of the agenda is to assist the Council and interested citizens in the conduct of this public meeting. Citizens should examine the agenda for the item of their interest. However, citizens are advised that only Public Hearings allow for public comment during the discussion/consideration process.

Citizens have an opportunity to be heard by the Council if the item meets the criteria as described in the agenda item called "DISCUSSION ITEMS." You must sign in at the start of the meeting to be recognized.

RECESS: In the event the meeting is still in progress at 7:30 p.m., the Mayor may call a ten-minute recess to allow Council members and participants a brief rest period.
3. CONSENT AGENDA

The following business items may be approved by one motion and a vote. If any one member of the Council so desires, any matter listed can be moved to a separate agenda item. (ACTION ITEM)

(a) MINUTES: Council may wish to waive the oral reading of the minutes and approve the minutes from the July 1, 2019 City Council Executive Session; and the July 9, 2019 City Council Executive Session.

(b) TREASURER’S REPORT: Council may wish to consider the Treasurer’s Report for June showing cash and investments as of June 30, 2019.

(c) HUMAN RELATIONS ADVISORY COMMITTEE REAPPOINTMENT: Council may wish to confirm the Mayor’s reappointment of Gloria Mayer to continue her service as a member of the Human Relations Advisory Committee. Ms. Mayer’s term will begin August 8, 2019 and will expire August 8, 2023.

(d) RATIFICATION OF AGREEMENT—US FISH AND WILDLIFE SERVICE: Council may wish to ratify the execution of a Landowner Agreement between the City of Pocatello and US Fish and Wildlife Service, subject to Legal Department review. The services provided are in support of the Portneuf River Vision, including the creation of a canoe trail and associated public outreach and wildlife habitat improvements. There is no cost to the City for this agreement.

Documents:

AGENDA-ITEM-3.PDF

4. COMMUNICATIONS AND PROCLAMATIONS

5. CALENDAR REVIEW

Council may wish to take this opportunity to inform other Council members of upcoming meetings and events that should be called to their attention.

6. FINAL PLAT—NORTHGATE DISTRICT DIVISION 1

Ken Pape of Portneuf Development, LLC, (mailing address: 4990 Valenty Road, Suite H, Chubbuck, ID 83202) represented by Chris Adams of Creek Hollow & Associates, Inc., (mailing address: 611 Wilson Avenue, Suite 1A, Pocatello, ID 83201) has submitted a final plat to subdivide 3.535 acres (more or less) into three (3) lots. The subdivision is to be known as Northgate District Division 1.

At their meeting on February 13, 2019 the Planning and Zoning
Commission recommended approval of the preliminary plat with conditions outlined by staff. (ACTION ITEM)

Documents:

AGENDA-ITEM-6.PDF

7. GOLF CONCESSIONAIRE AGREEMENT RENEWAL

Council may wish to consider approving the revised FORE Golf Concession Agreement Renewal, allowing for continued operation of the Highland and Riverside Golf Courses through December 31, 2023. (ACTION ITEM)

Documents:

AGENDA-ITEM-7.PDF

8. BID/CONTRACT—FAIRGROUNDS SANITARY SEWER EXTENSION PROJECT

Council may wish to consider the recommendations of staff for the following requests regarding the Fairgrounds Sanitary Sewer Extension Project. (ACTION ITEM)

a) Accept the low responsive bid received on June 26, 2019, from A+ Contractors, LLC, in the amount of $895,434.70 and, if the bid is accepted;

b) Authorize the Mayor’s execution of the Agreement between the City of Pocatello and A+ Contractors, LLC, in the amount of $895,434.70, for the Fairgrounds Sanitary Sewer Extension Project, subject to Legal Department Review.

Staff recommends approval.

Documents:

AGENDA-ITEM-8.PDF

9. DISCUSSION ITEMS

This time has been set aside to hear discussion items not listed on the agenda. Items which appeared somewhere else on the agenda will not be discussed at this time. The Council is not allowed to take any official action at this meeting on matters brought forward under this agenda item. Items will either be referred to the appropriate staff or scheduled on a subsequent agenda. You must sign in at the start of the meeting in order to be recognized. (Note: Total time allotted for this item is fifteen (15) minutes, with a maximum of three (3) minutes per speaker.)
PUBLIC HEARING PROCEDURE

1. Explanation of hearing procedures by Mayor or staff.
   - Ten (10) minute time limit on applicant presentation.
   - Three (3) minute time limit on public testimony.
   - Names and addresses are required from those presenting/testifying.
   - Questions/comments should be addressed to the Mayor and Council.
   - Council members must make their decision regarding the application on facts already in the record and information presented at the public hearing. Conflicts of interest, site visits and ex-parte contacts by Council members will be acknowledged.
   - Protocol requires that Council and audience be recognized by the Mayor prior to speaking.

2. Mayor opens hearing.

3. Presentation by applicant.
   - Note: Remember, applicant bears the responsibility for making his/her case.
   - This is also the time for Council members to ask their questions of the applicant.

4. Presentation by staff.

5. Written correspondence submitted for the record.

6. Testimony by those supporting the application.

7. Testimony by those uncommitted on the application.

8. Testimony by opponents to the application.

9. Rebuttal by the applicant.

10. Mayor closes the hearing and initiates motion/deliberations.
    - Note: The Mayor may choose to require a motion prior to the discussion in order to focus deliberations, or, the Mayor may choose to allow deliberations prior to the motion in order to facilitate wording of the motion.

11. Develop a written and reasoned statement supporting the decision.
An Executive Session of the City Council was called to order by Mayor Brian Blad at 3:03 p.m. in the Paradice Conference Room at City Hall. Council members present were Heidi Adamson, Roger Bray, Jim Johnston and Linda Leeuwrik. Council members Rick Cheatum and Beena Mannan were excused.

A motion was made by Ms. Leeuwrik, seconded by Mr. Johnston, to convene into Executive Session in accordance with Idaho Code Section 74-206(1)(j) To consider labor contract matters authorized under section 67-2345A [74-206A] (1) (a) and (b) Idaho Code; and Idaho Code 74-206(1)(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations. Upon roll call, those voting in favor were Leeuwrik, Johnston, Adamson and Bray.

In addition to the Mayor and Council members, the following staff members were in attendance: Ruth Newsom, City Clerk; Jared Johnson, City Attorney; Heather Buchanan, Human Resources Director; Anne Nichols, Administrative Services Manager; Ashley Welsh, Deputy Chief Financial Officer/Treasurer; Roger Schei, Police Chief; and Andrea Henderson, Deputy Risk Manager. Scott Marotz, Attorney at Law representing Anderson, Julian and Hull was also present.

Ms. Henderson was excused at 4:50 p.m.

Ms. Buchanan, Mr. Schei and Mr. Marotz were excused at 5:12 p.m.

Jeff Mansfield, Public Works Director/City Engineer; Merrill Quayle, Development Engineer; and Skyler Allen, Utility Engineer; joined the meeting at 5:15 p.m.

Council discussed topics within the parameters of the above statutes

Mayor Blad adjourned the Executive Session at 5:54 p.m.

APPROVED:

PREPARED BY AND ATTEST:

RUTH NEWSOM, CITY CLERK

BRIAN C. BLAD, MAYOR
An Executive Session of the City Council was called to order by Mayor Brian Blad at 1:05 p.m. in the Paradise Conference Room at City Hall. Council members present were Heidi Adamson, Roger Bray, Jim Johnston, Linda Leeuwrik and Beena Mannan. Council member Rick Cheatum was excused.

A motion was made by Ms. Mannan, seconded by Mr. Johnston, to convene into Executive Session in accordance with Idaho Code Section 74-206(1)(g) To consider labor contract matters authorized under section 67-2345A [74-206A] (1) (a) and (b) Idaho Code; and Idaho Code 74-206(1)(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations. Upon roll call, those voting in favor were Mannan, Johnston, Adamson, Bray and Leeuwrik.

In addition to the Mayor and Council members, the following staff members were in attendance: Ruth Newsom, City Clerk; Jared Johnson, City Attorney; Anne Nichols, Administrative Services Manager; Ashley Welsh, Deputy Chief Financial Officer/Treasurer; Jeff Mansfield, Public Works Director/City Engineer; Merrill Quayle, Development Engineer; Skyler Allen, Utility Engineer; Levi Adams, Water Pollution Control Superintendent; and Melanie Gygli, Planning and Development Services Director. Buck Swaney, Millennial Development Partners; and Ken Pape, Portneuf Development LLC were also present.

Mr. Mansfield, Mr. Quayle, Mr. Allen, Mr. Adams, Ms. Gygli, Mr. Swaney and Mr. Pape were excused from the meeting at 2:36 p.m.

Roger Schei, Police Chief and Heather Buchanan, Human Resources Director joined the meeting at 2:40 p.m. Scott Marotz, Attorney at Law representing Anderson, Julian and Hull joined the meeting by phone at 2:57 p.m.

Mr. Schei was excused at 4:05 p.m.

Council discussed topics within the parameters of the above statutes

Mayor Blad adjourned the Executive Session at 4:22 p.m.

APPROVED:

PREPARED BY AND ATTEST:

RUTH NEWSOM, CITY CLERK

BRIAN C. BLAD, MAYOR
Landowner Agreement No: FWS-Pocatello LOA
Cost Structure: Coop Agreement
Other: NA

PARTNERS FOR FISH AND WILDLIFE PROGRAM
LANDOWNER AGREEMENT

This Landowner Agreement (Agreement), dated June 27, 2019 between the City of Pocatello, and the U.S. Fish and Wildlife Service (USFWS) is entered into pursuant to authority contained in the Partners for Fish and Wildlife Act (P.L. 109-294), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-j), as amended. This project was selected for funding because the Landowner(s) share(s) a common objective with the USFWS to restore habitat for the benefit of Federal trust species on private lands, and the project supports priority actions identified in the Regional Partners for Fish and Wildlife (Partners) Program Strategic Plan.

The City of Pocatello, hereby agrees to participate with the USFWS in conducting certain wildlife management practices on lands owned or managed in Bannock County, State of Idaho, described as follows: all of, or within, or to a radius of 30 miles of the Pocatello city limits.

In signing this Agreement, the Landowner(s) join(s) as a participant in a wildlife habitat improvement program and grants to the USFWS authority to complete the habitat improvement project or the Landowner(s) may personally carry out management activities with financial or material support as described in attached Exhibit A. Any donation of supplies, equipment, or direct payment from the USFWS to the Landowner for carrying out the habitat improvements is included in Exhibit A. The activities conducted pursuant to this agreement are not to replace, supplement or otherwise contribute to any mitigation or compensation that may be required of the Landowner(s), or other parties, as a result of any mandated requirements.

The term of this Agreement (also referred to as the habitat retention period) will be for 10 years from the date of signature of this award. This Agreement may be modified at any time by mutual written consent of the parties. It may be terminated by either party upon 30 days advance written notice to the other party(ies). However, if the Landowner(s) terminate(s) the Agreement before its expiration, or if the Landowner(s) should materially default on these commitments, then the Landowner(s) agree(s) to reimburse the USFWS prior to final termination for the prorated costs of all habitat improvements placed on the land through this Agreement OR run concurrent with the existing U.S. Fish and Wildlife Service easement on the property and be subject to the terms and conditions of the easement regarding modification/termination. For these purposes, the total cost of the habitat improvements to the United States is agreed to be $2,000.00.

Landowner:
The Landowner(s) or his/her land manager, with legal authority over land management decisions, guarantee(s) ownership of the above-described land and warrants that there are no outstanding rights that interfere with this Landowner Agreement.

The Landowner(s) will notify the USFWS of planned or pending changes in ownership. A change of
ownership shall not change the terms of this Agreement. The Agreement and terms shall be in effect on
the described land for the term of the Agreement.

The Landowner(s) agree(s) to allow access (with advance notice) to the USFWS to implement the
project described in the work plan, and to monitor project success.

The Landowner(s) retain(s) all rights to control trespass and retains all responsibility for taxes,
assessments, and damage claims.

During the habitat retention period, the landowner must maintain the habitat restored under this award.

At the end of the habitat retention period, the habitat improvement project will become the sole property
and complete responsibility of the Landowner(s). There shall be no obligation to the USFWS after the
term of the Agreement has expired.

The Landowner(s) will be responsible for securing any necessary permits. The Landowner(s) agree(s)
to identify USFWS' contribution to the project during public presentations, reports, or other information
published about the project, as appropriate.

USFWS:

The USFWS will work with the Landowner(s) [and any other cooperators signing this Agreement,]
throughout the entire Agreement term to support actions needed to ensure that the project is designed
and constructed per the Agreement and functions as intended.

The USFWS, its agents, or assignees will provide advanced notice prior to accessing the Landowner(s)
property to implement the project described in Exhibit A, and to monitor project success.

The USFWS assumes no liability for damage or injury other than that caused by its own negligence, on
the above acreage. The USFWS does not assume jurisdiction over the premises by this Agreement.

Spatial Information Sharing: In accordance with the Privacy Act of 1974, permission must be
obtained from the Landowner before any personal information can be released. The only information
that can be shared is payment information that is authorized by law. Therefore, Landowner consent is
requested to allow for sharing of spatial information about this project solely with conservation
cooperators providing technical or financial assistance with the restoration, enhancement or
management of fish and wildlife habitat.

X I, the Landowner, consent to having spatial information about this project shared with
other conservation cooperators.

☐ I, the Landowner, do NOT wish to have any spatial information about this project shared
with other conservation cooperators.
Signatures:

City of Pocatello  Brian C. Blad, Mayor

7/8/19

Cary Myler, USFWS Partners for Fish and Wildlife Program Biologist

Date

Sandi Arena, USFWS Assistant State Supervisor

Date
EXHIBIT A

Description of Habitat Improvement Project and Objectives:

The USFWS and the City of Pocatello have agreed to partner together on property that is owned or operated by the City of Pocatello to perform multiple projects in or adjacent to the city limits that will benefit wildlife habitat, enhance natural river flows, or contribute to public education and citizen science.

The City and multiple partners are working cooperatively to enhance the Portneuf River to enable the public to utilize the river through recreational activities that include use of: canoe, kayak, float tubes, paddle boards, and other means on the River through and around city limits. Parking lots and canoe put-ins and take-outs are planned in strategic areas that will allow access for use and provide many with opportunities to utilize this resource. Debris dams and potential hazard trees will be removed from the river course. The Service will work with the City of Pocatello and other partners to create a safe environment for public citizens to utilize this natural resource through financial and in-kind services. The Service will also work with the city to develop riparian and wetland habitat in areas where the city has jurisdiction.
FINAL PLAT SUBDIVISION APPLICATION  
POCATELLO CITY COUNCIL  
MEETING JULY 18, 2019  

FILE # 19-1591

SUBDIVISION: Northgate District Division 1  
APPLICANT/OWNER: Portneuf Development, LLC – Contact: Ken Pape  
SURVEYOR/ENGINEER: Creek Hollow – Contact: Chris Adams, PLS  
TITLE REPORT: Title report was submitted and reviewed by the City Staff  
LOCATION: West of Olympus Drive extension & South of Northgate Parkway  
LOTS/UNITS: Northgate District Division 1 with a total of 3 lots proposed  
PUBLIC ACCESS: Public Roads: Olympus Drive; Gold Star Drive; Internal street system will be private.  
STAFF: Matthew Lewis, Senior Planner  

FINDINGS & CONDITIONS:  
Staff finds that the final plat is in substantial conformance with the preliminary plat as reviewed and recommended approval by the Planning & Zoning Commission at their meeting held on February 13, 2019. The proposal is compliant with all applicable standards. The Council may wish to approve the final plat with the following conditions attached:  

1. All conditions submitted by Public Works Department representatives as noted in the attachment shall be adhered to;  
2. All other standards or conditions of Municipal Code not herein stated but applicable to residential development shall apply;  
3. A building permit may not be issued unless all applicable standards of Municipal Code Section 16.24.100 are adhered to, or a subdivision surety bond and warranty bond is obtained as outlined in Municipal Code 16.24.110, prior to recording; and  

REQUEST: The request is for final plat approval for Northgate District Division 1. The proposal calls for the platting of 3.53 acres (more or less) into 3 lots. Lots 1 & 2 Block 1 are zoned Commercial-General while Lot 1 Block 2 is zoned Residential-Commercial-Professional. Municipal Code does not require a minimum lot size for commercial lots.  

RIGHT-OF-WAY IMPROVEMENTS: As proposed, the subdivisions will create one (1) new public road to be known as Gold Star Drive, which will extended generally east/west approximately 689 feet from Olympus Drive. The road will eventually connect west to Fairgrounds Road. The proposed right-of-way section consists of the following:  

Fifty foot (66") Right-of-Way:  
Gold Star Drive:  
* Two 11-foot wide travel lanes;  
* 11-foot wide center turn lane;  
* Two 4-foot wide bike lanes  
* 2’ rolled curb and gutter on both sides;  
* 5-foot wide park strip on both sides; and  
* 5-foot wide sidewalk on both sides.  

Lots 1 & 2 Block 1, will also have a shared approach onto Olympus Drive which will be limited to a right-in/out only.
WATER, SEWER, & STORMWATER: Infrastructure such as water and sewer will be provided meeting all standards as set forth by Public Works. All other stormwater will be contained on individual lots as part of future development. City Erosion and Sediment Control and Stormwater Management requirements shall be strictly adhered to.

UTILITY PROVIDER & CITY DEPARTMENT NOTICE: Utility providers and affected City Departments were provided notice on 05/11/19. No comments were received from utility providers however, a written comment was received from Idaho Department of Fish and Game Southeast Region (attached). City staff comments are contained in the attachment fromm public works.

PRIVATE COVENANTS, RESTRICTIONS & CONDITIONS: Recorded Owner’s Covenants, Conditions and Restrictions (CC & R’s) for the subdivision, if any, must be submitted after recording of the final plat.

COMPREHENSIVE PLAN:
The Comprehensive Plan Land Use Map designates the area Commercial and Mixed-Use. Staff finds the following goals, objectives and policies from the Comprehensive Plan to be applicable to this application:

  Economic Development Policy under Objective 3.2: Encourage mixed-use commercial, professional and residential developments to serve as transition areas between residential neighborhoods and commercial or industrial uses.
  Housing Goal 1: Encourage development of a wide variety of high-quality housing opportunities that are safe, sanitary, attractive and affordable.

  Objective 1.1: Encourage development of housing affordable for households of all income levels throughout the community.

OPTIONAL MOTIONS:
1. Denial of the Application: “Motion to recommend deny the final plat application from owner Portneuf Development, LLC for Northgate District Division 1, finding the application does not meet the standards for approval under Chapter 16.24 of Pocatello Municipal Code, finding that: [cite findings for denial].”

2. Approval of the Application: “Motion to approve the final plat application from owner Portneuf Development, LLC for Northgate District Division 1, finding the application does meet the standards for approval under Chapter 16.24 of Pocatello Municipal Code, with the conditions of approval: [insert conditions of approval here]”

ATTACHMENTS:
A. Staff Report with attachment
B. Fish and Game letter
C. Application & final plat
Memorandum

To: Matthew Lewis, Senior Planner
From: Merril Quayle PE, Public Works Development Engineer
Date: 7/10/2019
Re: Northgate District Division 1 – City Council Final Plat (7/18/2019)

The Public Works Departments have reviewed the final plat/construction drawings application for the above mentioned project and submits that the following changes and items shall be addressed and approved prior to beginning construction. Approval is contingent on the completeness, accuracy, serviceability, and compliance to City Standards.

1. Plat
   A. Prior to recording the Plat a more inclusive and comprehensive review shall be done, coordinate all plat correction through City Surveyor.
   B. Subdivision plat shall conform to all state and local laws and ordinances.
   C. Notes on the plat shall be approved by the City of Pocatello Engineering and Legal Department prior to recording.
   D. The City of Pocatello certificate to read: The plat on which this certificate appears is hereby approved and the dedications are hereby accepted by the City of Pocatello...
   E. Submit any CCR’s associated with this plat to the City after recording.
   F. Provide adjoining property owners recorded deeds, a copy of all recorded easements and document(s) which grants the signatory to sign the plat on the behalf of the owner(s) to the City Surveyor for final review.
   G. The plat shall be reproducible on an 8.5x11 sheet of paper per Bannock County instructions.
   H. The plat shall be black opaque ink, no gray scale or color.
   I. Edit and make corrections to note 2
   J. Add note, Easements not depicted:
      All lots in this subdivision are subject to a drainage easement equal to the primary structure setback line along all lot lines. Lots must be graded and maintained so as to minimize drainage to adjoining properties.

2. Construction Plans/Infrastructure
   A. Sheet C100
      1. Change Gold Start Monument access to 30-feet.
   B. Sheet C900
      1. Change Asphalt Pavement Section to 4-inch Class III Asphalt, 4-inch Base Course, and 12-inch Sub Base.
   C. Sheet PP01
      1. Verify sanitary sewer pipe grade and size continuing to the west.
   D. General
      1. Filing of a notice of intent (NOI) and a formal Storm Water Pollution Prevention Plan (SWPPP) in accordance with the Environmental Protection Agency (EPA) Construction General Permit (CGP) shall be submitted if the project requires, if required then a copy shall be submitted to the City.
2. An erosion and sediment control plan and a final stabilization plan will be required as part of the final plat application. An individual who has successfully completed an approved training course and who has demonstrated competence, through education, training, and knowledge of the applicable laws and regulations in erosion and sediment, and is current on certifications shall be required to be the responsible person to oversee the plan (if certified person is unknown indicate that information will be submitted prior to any work to the site). Submittal shall meet the requirements of the federal construction general permit.

3. Stormwater design and construction shall meet the core elements in the Portneuf Valley Stormwater Design Manual such as but not limited to; on site retention of the 95% storm, treatment Design (volume, flow, and bypass), site passage of upland flow and site runoff, Operation and Maintenance Manual, access to pond and structures.

4. Pond side slopes and embankments shall be designed and constructed per Section 6.4.6 SETBACKS, SLOPES, EMBANKMENTS & SPILLWAYS of the Portneuf Valley Stormwater Design Manual, embankments 4 feet in height or more shall be constructed as recommended by a Geotechnical Engineer.

5. Per Section 800 Geotechnical and Earthwork of the City of Pocatello Design Principles and Standards, Structures shall not be permitted on slopes of 20 percent or greater without a civil site plan by a licensed engineer in the State of Idaho. Included in this section, 800.08 Grading, slopes over 15% require engineered grading with recommendations included in a geotechnical engineering report and incorporated in the grading plans or specifications. Guidelines for Soils Engineering Report Risk Analysis Elements can be found in Appendix B of the City of Pocatello Design Principles and Standards.

6. Provide access to all structures in ponds for maintenance.

7. As-Built Drawings shall be submitted on Arch D (24" x 36").

8. A “will serve” letter from each serving utilities is required to be submitted to the City.

9. Utility and street light approval is required by the City.

10. Provide a copy of the bid schedule of the infrastructure for the City’s year end reporting.

11. Per Section 500.04.16, City of Pocatello Design Principles and standards, a pavement preservation technique “Fog Seal” of streets shall be required prior to the two (2) year warrantee period on all newly accepted streets. Developer can have this done by a private contractor or have the City perform the work at the Developer’s expense (approximately $0.30 per square yard for materials, 2017 cost). The city will bill the Developer after the work is completed if the City performs the work.

12. The developer will also be responsible to remove any sediment buildup in ponds constructed with the development as well as clean all storm water infrastructure prior to the two (2) year warrantee period.

13. Per ordinance 16.24.110: SUBDIVISION SURETY BOND AND WARRANTY BOND, a warranty bond for a minimum of twenty-five thousand dollars ($25,000.00) or a maximum of five percent (5%) of one hundred twenty-five percent (125%) of the original cost estimate for the required infrastructure and improvements, whichever is the greater amount.

14. Per Section 500.04.16 Asphalt of the City of Pocatello Public Works Design Principles and Standards, Pavement preservation technique “Fog Seal” of streets shall be required prior to the two (2) year warrantee period on all newly accepted streets. Developer can have this done by a private contractor or have the City perform the work at the Developer’s expense (approximately $0.30 per square yard for materials, 2017 cost). The city will bill the Developer after the work is completed if the City performs the work.

15. This area was annexed 02/15/2018 Ordinance #3001 and is subjected to a “Water Right Value” per Resolution 2006-02. Based on the proposed development layout and land use, the “Water Right Value” payment due prior to recording of the plat will be $10,670.40.
Hi Terri,

Our staff has reviewed the Northgate District Division 1 final plat submitted to the City of Pocatello. Based on this review, we do not have substantial concerns regarding impacts to fisheries or wildlife populations resulting from this project. However, the proposed property is located approximately 2 miles southwest of the Oregon Trail Shooting Range, at 9999 West 2 1/2 Mile Rd, Pocatello. The shooting range, operated by the Gate City Sport Shooting Association, is the only officially designated outdoor range for sport shooting in the greater Pocatello area and offers a safe, structured environment for these activities. The range receives considerable use by the public, as well as being used for training and mandatory recertification by Idaho Department of Fish and Game, Pocatello Police Department, Chubbuck Police Department, and Bannock County Law Enforcement Officers. The noise associated with the shooting range may be audible from the lots at Northgate District Division 1. Any potential impact associated with conflicts between businesses and the Oregon Trail Shooting Range is of concern for the Department. The Department recommends business owners should be made aware of the shooting range and the activities therein prior to purchase.

Thank you for the opportunity to review and provide comment on this project.

Becky Abel  
Environmental Staff Biologist  
Idaho Department of Fish and Game  
1345 Barton Road  
Pocatello, ID 83204  
O: 208.236.1258  
M: 208.251.2588
PLANNING & DEVELOPMENT SERVICES
PO Box 4168, 911 North Seventh Avenue
Pocatello, Idaho 83205
(208)234-6184  FAX (208)234-6586

FINAL SUBDIVISION PLAT APPLICATION

Submittal Date: 6/17/19  
City Council Date: 7/18/19  
Permit No.: 19-1027

Filing Fee: Planning Review $250 + Survey Accuracy Review $250 + (3 lots x $25 = $75) + Public Improvements Plan Review $200 + (3 lots x $20 = $60) = Total Due $835. (Add all the yellow highlighted amounts to get the total due amount).

Applicant: Ken Pape  
Name: Town Center 5th Fee Title Report  
Mailing address: 4990 Valenty Rd, Suite H  
City, State, Zip: Chubbuck, ID 83202  
Phone: (208) 251-8115  
Email: kenpape.prd@gmail.com

Project Information:
Zoning: COMMERCIAL GENERAL  
Comprehensive Plan Designation: COMMERCIAL
Legal Description & Deed Instrument Number: # 21706688-93
Location (Section, Township, Range): Section 1, Township 6 South, Range 34 East
General Location: North of Chubbuck Road, West of Olymus Drive Extension
Total Acreage: 3.535 AC.  
Total Number of Lots: 3
Proposed Subdivision Name: NORTHGATE DISTRICT DN. NO. 1  
Is this a replat? ☐ Yes ☒ No
Replats of existing subdivision lots require the submittal of a copy of the original subdivision plat with the application.

TERMS AND CONDITIONS

Approval of this application does not permit the violation of any section of the Building Code or other Municipal Codes.

This application shall not be considered complete, nor will City Council meeting date be scheduled, until all required information has been submitted and verified by City staff.

If the applicant is not the legal owner of record of the property, then proper authorization from the owner must be submitted with the application.

A copy of the current recorded deed for the property must be submitted with the application.

For Short Plats that require construction drawings for infrastructure improvements, additional City Engineering review and Inspections fees will be required in conjunction with the submittal of required construction drawings.

I hereby acknowledge that I have read this application and state that the above information is correct and agree to the above terms and conditions.

Signature of Applicant: [Signature]  
Date: 6/17/19
The City of Pocatello has enjoyed a mutually beneficial long-term arrangement with FORE Golf, Inc. for operation of the Highland & Riverside courses, and provision of golf services for the community. At one time a financial liability for the City, the golf course concessionaire agreements have provided for significant contributions to the Recreation Fund and water/utility payment revenues to the City, as well as generated ample Capital Improvement/Non-Resident Pass-Through Fees each year.

Past golf concession agreement terms have been designed and negotiated to achieve the goal of a "three legged stool" operational philosophy, in which financial terms & conditions are mutually beneficial to the Golfing Community, the City and Golf Concessionaire. However, due to recent play level decreases, a trend has developed where the traditional static/set financial obligation terms of previous agreements are no longer achieving mutual benefit for the Concessionaire, prompting Council direction to re-negotiate the financial obligation terms of the golf concession agreement for the purpose of securing continued provision of golf services for the community.

As a result, Staff has developed a market based – percentage of operational profits approach for golf concession agreement financial obligations. This system is capable of adjusting to market conditions and continuing high quality community golf services, while maintaining City revenue streams and mutual benefit for the Concessionaire.

Highlights of the proposed revised terms & conditions for the Golf Concession Agreement are as follows:

- Replacement of base lease and set utility charges in past agreements with a percentage of operational profits approach, with a 68% City and 32% Concessionaire percentage split (excluding sewer, garbage and non-summer line water charges).
Concessionaire pays monthly payments of $40,000 for the 5-month period of April – August each year ($200,000), as a placeholder to final obligations due.

Concessionaire then pays remainder of financial obligations due during May of the following season, per annual financial statement information provided (independently prepared by Certified Public Accountant Firm).

*Note: Depending on the season and operational profit levels, a credit towards the Concessionaire’s monthly payments due the following season could also be applied.

Concessionaire payments are dispersed between the Water Dept. and Recreation Fund revenue accounts accordingly, based on traditional percentages of overall revenues received (Water Department: 53% and Rec. Fund: 47%).

In addition, as part of the re-negotiated terms, the following additional requirements are included in the proposed revised Concession Agreement:

Specific Golf Course Irrigation guidelines, outlining water conservation techniques and strategies that shall be adhered to by the Concessionaire, and under the oversight of City Parks Dept. Staff.

Golf Cart Fleet replacement requirements (minimum of 10 golf carts in 2019, and then a minimum of 4 golf carts per season thereafter for the remainder of the proposed revised 5-year agreement term).
<table>
<thead>
<tr>
<th>Season</th>
<th>Rec. Fund: $118,094 (47.4% of $249,130)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Summer Line: *$131,036 (52.6% of $249,130)</td>
</tr>
<tr>
<td></td>
<td>*$138,036 total utilities (-) $7,000 est. for SW, GA &amp; WA</td>
</tr>
<tr>
<td>2013</td>
<td>Rec. Fund: $115,791 (48.8% of $237,048)</td>
</tr>
<tr>
<td></td>
<td>Summer Line: *$121,257 (51.2% of $237,048)</td>
</tr>
<tr>
<td></td>
<td>*$128,257 total utilities (-) $7,000 est. for SW, GA &amp; WA</td>
</tr>
<tr>
<td>2014</td>
<td>Rec. Fund: $115,944 (47.4% of $244,510)</td>
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<tr>
<td></td>
<td>Summer Line: *$128,566 (52.6% of $244,510)</td>
</tr>
<tr>
<td></td>
<td>*$135,566 total utilities (-) $7,000 est. for SW, GA &amp; WA</td>
</tr>
<tr>
<td>2015</td>
<td>Rec. Fund: $114,868 (49.3% of $232,949)</td>
</tr>
<tr>
<td></td>
<td>Summer Line: *$118,081 (50.7% of $232,949)</td>
</tr>
<tr>
<td></td>
<td>*$125,081 total utilities (-) $7,000 est. for SW, GA &amp; WA</td>
</tr>
<tr>
<td>2016</td>
<td>Rec. Fund: $119,809 (45% of $266,148)</td>
</tr>
<tr>
<td></td>
<td>Summer Line: *$146,339 (55% of $266,148)</td>
</tr>
<tr>
<td></td>
<td>*$153,339 total utilities (-) $7,000 est. for SW, GA &amp; WA</td>
</tr>
<tr>
<td>2017</td>
<td>Rec. Fund: $122,960 (45.9% of $268,041)</td>
</tr>
<tr>
<td></td>
<td>Summer Line: *$145,081 (54.1% of $268,041)</td>
</tr>
<tr>
<td></td>
<td>*$152,081 total utilities (-) $7,000 est. for SW, GA &amp; WA</td>
</tr>
<tr>
<td>Totals</td>
<td>Rec. Fund: $707,466 (47.2% of $1,497,826)</td>
</tr>
<tr>
<td></td>
<td>Summer Line: $790,360 (52.8% of $1,497,826)</td>
</tr>
</tbody>
</table>
CONCESSION AGREEMENT RENEWAL

THIS CONCESSION AGREEMENT, made and executed this 18th day of July, 2019, by and between the City of Pocatello, a municipal corporation of Idaho, hereinafter referred to as “City” and FORE Golf, Inc., an Idaho corporation, referred to as “Concessionaire”;

WITNESSETH:

WHEREAS, the City has heretofore granted a Concession Agreement in the Highland and Riverside Golf Courses, owned by the City and located within the corporate limits; and

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

WHEREAS, Concessionaire has satisfactorily executed all the terms and conditions of previous Concession Agreements, as determined by the Pocatello City Council; and

WHEREAS, at their September 13, 2018 meeting, City Council directed staff to re-negotiate financial obligation terms and conditions of the Concession Agreement, beginning with the 2019 season and continuing in future seasons at Council discretion, to include revisions to Base Payment, Utility Service Payment, and Percentage of Gross Revenue Remittance obligations, for the purpose of re-establishing and maintaining City and Concessionaire financial viability, and continuation of Golf Course operations in service of the community.

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

1. GRANT OF CONCESSIONS. The City hereby grants to Concessionaire the exclusive privilege or Concession of maintaining and operating the Highland and Riverside Golf Courses owned by the City and located within the corporate limits during the renewal period commencing January 1, 2019, and ending December 31, 2023, in accordance with and subject to the terms and conditions that follow herein. Said golf courses, known collectively as the “Concession
premises,” are depicted on Exhibit “A”, attached hereto and incorporated herein. City and Concessionaire may renew this Agreement for an additional five (5) year period, solely at City discretion and subject to Concessionaire having satisfactorily executed all the terms and conditions of this License Agreement, as determined by the Pocatello City Council. However, the financial obligation terms and conditions for this Concession Agreement for the renewal period are subject to negotiation. If the parties cannot agree upon said negotiated financial terms for the renewal period one hundred and twenty (120) days prior to the expiration of the initial term of this License, the renewal option will be deemed unexercised and terminated.

2. **USE EXCLUSIVELY FOR GOLF PROGRAM.** The Concession premises and the facilities, fixtures, furnishings, and equipment located therein and thereon shall be used by Concessionaire exclusively to conduct a golf program for the citizens of Pocatello and for other golf patrons.

3. **PAYMENT TO THE CITY.** The Concessionaire does covenant and agree to remit to the City the following base monthly payments, each year during the term of the Concession Agreement:

   - No later than April 30th annually $40,000.00
   - No later than May 30th annually $40,000.00
   - No later than June 30th annually $40,000.00
   - No later than July 30th annually $40,000.00
   - No later than August 30th annually $40,000.00

The above annual base payments shall be made by check or money order payable to the City of Pocatello and shall be received in the Office of the City Treasurer in five (5) equal consecutive monthly installment payments by the 30th day of each indicated month.

The City Parks and Recreation Director and Concessionaire will have the option of adjusting specific monthly base payment amounts prior to the beginning of each golf season of the Concession Agreement, and based upon play level trends of the previous golf season, with all other terms and conditions of the agreement remaining un-impacted and in full force. If monthly
base payment amounts are to be adjusted upwards or downwards in any given year of the Concession Agreement, re-negotiation of specific monthly base payment amounts shall be concluded and agreed upon by the City and Concessionaire no later than April 1st annually.

In addition to the above base payments, the Concessionaire shall pay a percentage of all operational revenues received pursuant to this Concession Agreement, as follows:

<table>
<thead>
<tr>
<th>% PAID TO CITY</th>
<th>% Retained by Concessionaire</th>
</tr>
</thead>
<tbody>
<tr>
<td>68%</td>
<td>32%</td>
</tr>
</tbody>
</table>

Concessionaire financial information for determination of annual operational revenue shall be taken directly from annual year-end Financial Statement documents, which Concessionaire shall ensure are prepared by an independent Certified Public Accountant Firm, and which shall be provided to the City by the Concessionaire no later than March 31st annually. The formula for determination of annual operational revenue shall be as follows:

a) Total of annual monthly Base Payments figure shall be subtracted from the total Operating Expenses figure, which shall provide an adjusted total Operating Expenses figure.

b) Adjusted total Operating Expenses figure shall then be subtracted from the total Gross Profit figure, which shall provide the total Operational Revenue figure.

c) Total Operational Revenue figure shall then be divided and dispersed per the above outlined 68% of Operational Revenue paid to City, and 32% of Operational Revenue retained by Concessionaire.

*Note: Should the total base payments amount paid by Concessionaire exceed the Concessionaires total annual financial obligation to the City in any given year per terms and conditions outlined above, that excess amount paid shall be credited to the following year’s base payment obligations until satisfied, and that credit shall be split between the Recreation Fund and Water Fund per percentages outlined in Section 11 below.
For the purposes of determining annual percentage of operational revenue/profit distributions, annual total Operating Expenses, excluding annual monthly base payment and percentage of annual operational revenue amounts paid to the City, shall not exceed annual Consumer Price Index adjustments as set out in Section 7 below. Should annual total Operating Expenses figures provided in year-end Financial Statement documents exceed annual Consumer Price Index adjustment levels for any given year, said annual Operating Expenses figures shall be capped at the annual Consumer Price Index adjustment level for determination of annual percentage of operational revenue/profit distributions. In addition, should it become necessary to cap annual total Operating Expenses figures in any given year of the agreement, subsequent year Consumer Price Index adjustment level maximums shall be determined based on that capped previous year’s figure.

Should the State or Federal Government mandate Statewide or National increases to employee wage levels, or should other extraordinary circumstance arise, it is agreed that City and Concessionaire shall have the option of re-negotiating the annual Consumer Price Index adjustment level limit for annual total Operating Expense increases, with all other terms and conditions of the agreement remaining un-impacted and in full force.

Additional “percentage of operational revenue” payments as described above shall be due to the City no later than May 15th of the following calendar year.

4. PERIOD OF OPERATION. Weather or course conditions permitting, the Concessionaire shall operate the Concession from dawn to dusk, seven (7) days per week from at least March 1 through October 31 each year. Failure by the Concessionaire to conduct business for more than three (3) consecutive days during the period required above, unless for inclement weather, shall constitute breach of this Concession Agreement and, notwithstanding any other provision herein, the City may forthwith terminate the Concession as provided hereinafter.
5. **SCOPE OF CONCESSIONS TO BE PROVIDED:** The scope of this Concession includes a License to go upon and use the Concession premises for the purpose of conducting a golf program, with the necessary rights and responsibilities thereon.

   A. **CONCESSIONAIRE DUTIES:**

   (1) Provide player development programs, including adult and junior instructional programs.

   (2) Provide group and individual lessons.

   (3) Provide pro shop operations, including the sale of golf merchandise, supplies and equipment.

   (4) Provide power carts for rental purposes and club repair services.

   (5) Solicit, facilitate, and provide tournament play, league play and other special golf events.

   (6) Provide support and assistance for organized men’s and women’s golf associations.

   (7) Coordinate with the local high schools for team practices, matches and tournaments.

   (8) Provide starter services, course marshalling, and tee time reservations (Automated preferred).

   (9) Enforce PGA, IGA and local golf course rules.

   (10) Manage and oversee golf course security.

   (11) Provide a safe environment for the golfing public and employees.

   (12) Provide a quality food and drink concession operation, including beer and wine sales upon obtaining appropriate licenses from the State and local authorities.

   (13) Promote and market the golf facilities.

   (14) Assist with planning and execution (if possible) with any capital improvements and renovation to the golf courses and/or facilities.
(15) Provide all necessary supplies, materials, equipment and appropriate staff necessary to manage, operate and maintain the golf courses and facilities.

(16) Maintain a detailed employee training program during the renewal term, with a major emphasis on quality customer service. This program must meet the City's reasonable expectations. All Concessionaire employees (pro shop, food/beverage, marshals and maintenance) shall be trained for this program prior to the start of each season. Concessionaire will provide continued employee training, using this approved program, throughout the golf season as needed.

(17) All employees who are working in the pro shop and food/beverage concessions will be required to wear professional attire while on duty along with an appropriate name tag. Maintenance employees will be required to wear work shirts or t-shirts that identifies them as FORE Golf employees.

(18) Concessionaire will be required to continue implementation of a "mystery shopper" program during the renewal term, to help determine customer satisfaction with their golfing experience and to improve customer service. The City will provide the "shoppers." All "shopper" evaluations will be reviewed by the City and the Concessionaire in an effort to determine what improvements are needed to improve the golfer's experience and to further train employees.

(19) Concessionaire will provide opportunity for patron comments. Comments received will be shared with the Golf Advisory Board on an as needed basis.

(20) Concessionaire shall provide golf carts that are clean, presentable and in good working condition. This may require the purchase of replacement carts.

(21) Replace or improve the appearance of the existing "hand" carts on an ongoing basis, as needed.

(22) Provide a beverage cart for major tournaments and special events and as needed on weekends during the summer months.

(23) **Marketing/Publicity:**
(a) On or before March 1st of each golf season, Concessionaire shall, subject to City approval, provide a strategic plan to: increase the number of rounds of play; improve the quality of tournament/league play; retain the amount of golfing customers; and promote the facilities to new golfing customers, etc. Once approved, the plan must be followed by the Concessionaire. This plan should include, but not limited to the following:

(1) Continuation of a Point of Sale System to gather customer data (name, address, phone, email) to increase marketing/publicity of the golf course on a regular basis. The information then can be used to retain existing golfers (rather than lose them to other area courses), invite “new” customers, and provide additional information to existing patrons.

(2) The plan needs to include a commitment by the Concessionaire to design and implement a comprehensive advertising campaign to target and attract “new golfers.” Both paid and non-paid efforts shall include the use of a variety of media: marketing to hotels; contacting businesses/organizations for group outings; direct mail; and promotional offers, including demo days with equipment retailers; etc.

(3) Concessionaire will be required to provide and maintain a quality web site for the golf courses, under the name Pocatello Municipal Golf Courses. There may be opportunity for the City to provide some assistance in this effort. Items that are recommended for inclusion in the web site would be the following: golf course locations; photos and descriptions of each hole; course scorecard; fees/charges; information on staff; history of the courses; a calendar of events; “specials” if and when available; league and tournament results; and golf tips offered by the professional; etc.
(4) Maintain a social network presence through Facebook, MySpace, etc. with members and other users of the course.

(24) Concessionaire will be required to maintain use of automated tee time reservation systems during the renewal term.

B. MAINTENANCE OF THE GOLF COURSES:

(1) Maintain buildings, grounds, and golf courses to a mutually agreed-upon standards.

(2) On or before March 1st of each golf season, Concessionaire will develop and provide to the Parks and Recreation Director a Schedule of routine daily, monthly and annual maintenance of the golf courses (including but not limited to fairway, tees, and greens mowing; changing cups on greens; bunker maintenance; fertilizer, chemical and snow mold protection application; and weed control).

(3) The Concessionaire shall prepare and provide the Director with a monthly report every 30 days following the commencement of the golf season and the report shall identify any variances from the Schedule occurring during the preceding 30 days.

(4) Concessionaire will continue maintenance efforts and work to improve the appearance of the pro shops (interior and exterior), giving a priority to improving the appearance and the quality of the restrooms.

(5) Concessionaire will exercise reasonable efforts to maintain restrooms in a clean, sanitary condition, on a daily basis, throughout the hours of operation.

(6) At least on an “as needed” basis, Concessionaire will submit soil samples to a qualified vendor, as approved by the Parks and Recreation Director, for analysis to promote quality turf throughout the golf courses. The number of required samples will be mutually agreed upon by the Concessionaire and the Parks and Recreation Director. Reports will be presented to the Park and Recreation Director and used by the Golf Course Superintendent to fine tune turf management plans.
(7) Maintain natural areas with native grasses as proposed in the Master Plans, reclaiming natural areas as needed. The City shall provide all materials, including herbicide and seed, necessary to reclaim the subject areas with native grasses, and Concessionaire shall provide all labor. If reclamation of natural areas requires the relocation and reconfiguration of the golf course’s irrigation system in order to effectively and efficiently irrigate the areas to be reclaimed to native grasses, the City shall be responsible for all costs associated with the same.

(8) Continue replacement and/or repair yardage markers in each fairway. At a minimum, such yardage markers shall designate the 200, 150 and 100 yard distances on each hole and such markers shall be in place not later than March 1, 2020.

(9) Maintenance Standards.

(a) It is the intent of the parties that capital expenditures shall be the obligation of the City and the “day-to-day” maintenance costs shall be the obligation of the Concessionaire. For example, a remodel of the restroom facilities at one of the clubhouses would be a capital expenditure but the repair of a sink or toilet fixture would be a "day-to-day" maintenance. Capital expenditure as used herein shall be defined as any expenditure that extends the life of a City structure or golf course systems such as the irrigation system, and includes structural damage repairs, the expansion of structures or systems, the remodel of structures or systems, the replacement of mainline or lateral irrigation lines, and the complete asphalt overlay of the parking area. In the event of a dispute between the parties regarding the classification of an expense as either a ‘day-to-day maintenance expense’ or a ‘capital expenditure’, the parties agree to negotiate with each other in good faith to resolve the dispute in a fair and equitable manner.
(b) Concessionaire is required, at its sole cost and expense, to maintain and operate the golf course facilities in a good and safe condition in accordance with industry standards. This includes the maintenance and repair of golf courses; all interior and exterior structures; building systems; utility systems and connections; equipment; restrooms; paved areas; irrigation systems; course features; landscaping and natural areas; fencing; lighting; sidewalks; and fixtures. Concessionaire will be required to perform maintenance services at no less than the frequencies indicated in these specifications. Standards and frequencies may be modified from time to time as deemed necessary for the proper maintenance of the golf courses, in accordance with industry standards. Any modification or changes must be approved by the Parks and Recreation Director.

(c) The Concessionaire shall be generally responsible for maintenance of structural and mechanical components and equipment permanently attached to the Concession premises, including roofs, walls, foundations, heating, ventilation, cooling plant, plumbing and electrical systems, pumps and motors. The Concessionaire shall also be responsible for the repair and maintenance of roads, walks, and parking areas, fixtures and furnishings.

(d) Concessionaire shall be expected to provide an adequate staff to maintain the golf courses and facilities in excellent physical condition and appearance.

(10) Fertilization.

(a) Fertilization of Greens and Tees: Concessionaire shall, on a yearly basis and on a multiple application schedule, apply a total of no less than 3 lbs. per 1,000 square feet of nitrogen fertilizer (total of no less than 130.68 lbs. per acre) to ensure healthy and uniform growth of turf in accordance with industry standards. Should weather patterns in any specific year of the agreement renewal necessitate the use of either a greater or reduced
amount of nitrogen fertilizer than the stated minimum amount of 3 lbs. per 1,000 square feet, Parks & Recreation Director shall confer with Concessionaire to discuss and agree upon revised nitrogen fertilizer quantities for that year.

(b) Fertilization of Fairways: Concessionaire shall, on a yearly basis and on a one (1) – two (2) applications per year schedule, apply a total of no less than 1.25 lbs. per 1,000 square feet of nitrogen fertilizer (total of no less than 54.45 lbs. per acre) to ensure healthy and uniform growth of turf in accordance with industry standards. Nitrogen fertilizer used to attain the stated minimum level of 1.25 lbs. per 1,000 square feet shall consist of no less than 75% slow release variety.

(c) Fertilization of Roughs: Concessionaire shall apply nitrogen fertilizer as needed, to maintain healthy turf quality. Should frequency of fertilization be claimed insufficient, an appeal process shall be made available via the Golf Advisory Committee to consider concerns raised and to determine a consensus opinion on whether additional fertilization is necessary.

(11) Weed/Disease/Insect/Pest Control.

(a) Tees and Fairways: Concessionaire shall, on a yearly basis, perform one (1) broadcast application of all tee and fairway areas with a broadleaf rated turf grass herbicide to maintain healthy turf. In addition, Concessionaire shall also treat tees and fairways with additional chemicals on an as necessary basis, to control weeds, disease, insects and other pests to maintain healthy turf.

(b) Greens, Roughs and Natural Areas: Concessionaire shall treat greens, roughs and natural areas with chemicals on an as necessary basis, to control weeds, disease, insects and other pests to maintain healthy turf.

(12) Greens Maintenance. Maintain all greens according to acceptable playability and industry standards, based on the following minimum
standards:

(a) Change cups a minimum of four (4) times per week (leniency on this requirement will be given on a few of the smaller greens that have minimum pin placement locations available) during the active growing season. ("Active growing season" will be defined throughout this document as May through September.) It is recommended that cups will be changed more than this minimum requirement during the peak growing season to lessen compaction of the greens.

(b) Greens will be mowed between .100 and .140, or a different length as may be agreed upon by the parties based upon the condition of the greens and the time of year.

(c) The greens should be verti-cut or groomed once per month or as needed to control mat and thatch buildup.

(d) Aerate greens at least once per year (recommended twice per year) and remove plugs if core aeration is used.

(e) Apply fungicide as needed and/or other recommended measures to control snow mold and reduce winter desiccation based on a reasonable treatment program approved by the Parks and Recreation Director. Concessionaire will be responsible to monitor greens for signs of snow mold and other problems. If problems or snow mold are identified, immediate corrective action shall be taken by the Concessionaire.

(f) A soil analysis of greens shall be conducted as needed and a fertilization program shall be adopted based on such soil analysis. Such soil analysis should be performed by a qualified vendor as approved by the Parks and Recreation Director.

(g) Any damaged areas of the greens will be seeded or sodded to correct the problem area.
(13) **Tee Maintenance.** Maintain all tees according to acceptable industry standards, based on the following minimum requirements:

(a) Keep ball washers filled with water to proper level as needed. (Washers will not be filled during months that freezing is likely.) Provide towels at ball washers. Towels will be replaced when dirty or missing. Tee markers will be moved a minimum of three (3) times per week during the active growing season or as needed to ensure adequate teeing area with quality turf.

(b) Tees will be mowed to ½ inch or less during the active growing season or a different length as may be agreed upon by the parties depending on the condition of the tees and the time of year. Tees will be mowed during the active growing season as needed so that the turf does not exceed the designated height.

(c) Aerate tees and top dress at least once per year or as needed to maintain healthy turf.

(14) **Fairway Maintenance.** Maintain all fairways according to acceptable industry standards, based on the following minimum requirements:

(a) Mow fairways to ½ inch to ¾ inch during the active growing season or a different length as may be agreed upon by the parties depending on the turf condition and the time of year. Fairways will be mowed during the active growing season as needed so that the turf does not exceed the designated height.

(b) Over-seed and top dress (or sod) worn or barren areas of the fairway as needed.

(c) Aerate fairways as needed to ensure quality turf.

(15) **Roughs:**

(a) Roughs will be mowed as needed to ensure that rough areas do not exceed two (2) inches. Due to limitations on manpower and equipment, roughs may be allowed to exceed this minimum by no more than one (1)
inch and for no more than seven (7) days.

(16) Natural Areas.

(a) Natural areas will be maintained in a satisfactory manner.

(b) Irrigation of natural areas is limited to keeping the vegetation alive and healthy.

(17) Accessory Equipment. Maintain all golf course accessory equipment in a clean, safe, functioning condition at all times, and replace equipment and/or materials as necessary and within a reasonable amount of time.

This includes, but is not limited to the following:

(a) All signs;

(b) Tee benches;

(c) Tee markers;

(d) Ball washers, including tee towels;

(e) Out of bounds markers;

(f) Greens flags, poles and cups;

(g) Practice greens markers and cups;

(h) Trash receptacles; and

(i) Cleat brushes.

(j) Conduct necessary maintenance on drinking fountains and the leader board signs to keep them in an acceptable, presentable condition. If necessary, replacement will be the responsibility of the City.

(k) Proper course-identification signs shall be erected upon the Concession premises by the Concessionaire, and shall be maintained in good condition. Such signs shall be constructed and displayed in accordance with the Pocatello Municipal Code.

(18) Irrigation. Maintain entire irrigation systems, replacing parts as necessary, to ensure that mainlines, valves, lateral lines, sprinkler heads and controllers are in good repair, functioning properly and conforming to manufacturer’s specifications. Irrigate as required to maintain adequate

City of Pocatello / FORE Golf, Inc. – Concession Agreement Renewal, Page 14
moisture for turf growth and appearance. Adequate soil moisture shall be determined by visual observation, plant resiliency and examination of cores by soil probe or other moisture content devices.

(a) Consideration must be given to soil texture, structure, water holding capacity, drainage, compaction, precipitation rate, runoff, infiltration rate, percolation rate, evapotranspiration, seasonal temperatures, prevailing wind conditions, time of day or night, and type of turf and root structure. Consideration of the above factors may require hand watering and manual watering in certain areas.

(b) Monitor all systems within the golf course premises and correct for coverage on a weekly basis or more frequently and adjust as necessary.

(c) Inspect irrigation controls on a weekly basis or more frequently and adjust as necessary to ensure adequate irrigation.

(d) Perform regular checks for and remedy leaks in a timely fashion.

(e) In the event of an emergency shortage of available city water, the Concessionaire will be required to adhere to all directives and restrictions imposed by the City regarding water consumption. If water use is restricted, available water shall be distributed according to the following priority: (1) greens; (2) tees; (3) fairways; and (4) other turf and landscape areas. In the event the Concessionaire suffers a loss of revenue by reason of the emergency water restriction, the parties agree to negotiate, in good faith, a modification of this agreement to provide for a reduction in the amount of the payments due and payable to City, by Concessionaire, to offset the Concessionaire’s lost revenue.

(19) The parties agree and acknowledge that the irrigation system infrastructure (delivery pipe/wiring) at the Highland & Riverside courses may need substantial capital improvement and/or possible replacement during the contract term. Should this become necessary, the City will direct the Parks and Recreation Director to periodically meet with the Concessionaire for the
purpose of developing a plan to finance and implement the repairs and/or replacements, and to bring their plan to the City for review and action.

(20) **Other Maintenance Requirements.**

(a) Daily removal of litter from the golf course, including the golf course proper, maintenance yard, landscaped areas and driving range. Remove all trash and debris resulting from golf course maintenance as it occurs. Clean, repair and replace trash receptacles as necessary to maintain clean, safe and sanitary conditions. No major construction projects may occur on the Concession premises unless preceded by notice to and written permission from the City’s Park and Recreation Director.

(b) Maintain all landscaped areas, flower and shrub beds, groundcover planting areas in a manner to promote healthy growth and a pleasing appearance.

(c) Maintain all trees in a safe, healthy and aesthetically pleasing appearance to the best of Concessionaire’s ability. Keep adjacent turf mowed and trimmed around the trunks of trees. Trees will be removed when determined to be dangerous or diseased. All branches and tree debris will be removed from the turf areas as necessary and properly disposed. The City agrees to assist with tree maintenance when staff is available and budget allows. The City agrees to contribute an amount, to be determined by the Parks and Recreation Director and the Golf Advisory Board, from the Golf Course Capital account for tree maintenance and tree planting on an annual basis.

(d) Maintain all sand traps in raked, edged and weed-free condition. Replace sand and rakes as necessary.

(e) Control rodents and other animal pests to protect destruction of turf and plants on the golf course property.

(f) Maintain parking lots, driveways, walkways and cart paths in a clean, edged, safe and weed-free condition.
(g) All buildings, including clubhouses, maintenance and storage buildings will be maintained in a manner to keep them clean, orderly, safe, operational and conforming to all laws and regulations.
(h) Maintain a small greens nursery at either golf course to be used to sod any damaged areas in existing greens. This greens nursery will be maintained at industry standards previously described in the “Fertilization”, “Weed/Disease/Insect/Pest Control”, and “Greens Maintenance” sections. Greens nursery area may also serve as a practice facility, at the discretion of the Concessionaire.

C. FINANCIAL REPORTING AND ACCOUNTING RESPONSIBILITIES:

(1) Collect all golf course fees, including City “pass-thru” fees (capital and non-resident).
(2) Provide the City with all required finance, accounting, play reports and records.
(3) Continue to utilize the Point of Sale System (POSS) to ensure the City, as well as Concessionaire, receives payment for the goods and services sold. Upon request, customers will be given a receipt for transactions in the pro shop and food/beverage concession.
(4) Incorporate a $1.00 per round Capital Fee into the daily green fees. The City and Concessionaire shall mutually determine a flat capital fee to be charged for seasonal golf passes. (See Section 7. Quality and Cost of Golf Services)
(5) Concessionaire will inform the Parks and Recreation Director of any fee waivers or exceptions exceeding $50.00 off the amount of any approved fees arising out of any circumstances, such as tournaments and special events.
(6) Concessionaire will provide a detailed report each month of the season to the Parks and Recreation Director. Such report shall include the following: All charges for green fees (9 and 18 hole), seasonal passes sold in each category, cart rentals, tournament/special event information.
6. **USE OF CITY’S FIXTURES, FURNISHINGS AND EQUIPMENT.** The License granted hereunder includes exclusive right to manage and use the facilities, fixtures, and furnishings owned by the City of Pocatello and currently located on the Concession premises. Said furnishings and equipment are listed in Exhibit “B”, attached hereto and incorporated herein. The Concessionaire shall provide all additional facilities, fixtures, furnishings and equipment and personal property necessary for the operation of a golf program, not set out in Exhibit “B”. Any such additional facilities, fixtures, furnishings and equipment and personal property not listed in Exhibit “B”, but located upon the golf courses, is property of the Concessionaire. At least once each year, a physical inventory of the City’s fixtures, furnishings, and equipment shall be taken and a copy delivered to the City Parks and Recreation Director. The Concessionaire shall notify the City of any missing items or any discrepancies found regarding the inventory lists.

Upon termination of this Concession Agreement, all fixtures and furnishings owned by the City shall remain on the premises. Concessionaire shall return all City-owned fixtures and furnishings in as good of a condition as said fixtures and furnishings were in as of the date this Agreement, reasonable wear and tear excepted.

Nothing herein shall preclude the City’s right to permit use of the facilities or the realty or any City-owned items, including fixtures, furnishings, equipment, and/or personal property during the off-season in any manner which will not cause damage to the Concession premises (such as setting up a cross-country ski course). Concessionaire shall be given advanced notice of such activities and an opportunity to object if Concessionaire believes damage will occur.

Furthermore, the City reserves the right to carry out any redesign, remodeling, reconstruction, or new construction on the Concession premises which it deems advantageous to the long-term operations of the facilities, if such modification can be accomplished without substantial interference with the Concessionaire operations.

The timing, extent, and nature of any improvements shall be solely within the discretion of the Mayor and Council of the City.
7. **QUALITY AND COST OF GOLF SERVICES.**

**A. GOLF CART FLEET:**

Golf Concessionaire shall supply and maintain a serviceable and well-conditioned Golf Cart Fleet inventory at all times during the agreement term. Golf Cart Fleet inventory shall be of adequate number to successfully accomplish provision of community Golf Services. By no later than August 30, 2019, Concessionaire shall replace a minimum of five (5) golf carts per golf course, for a total of no less than ten (10) golf carts replaced. Beginning with the 2020 Season and continuing for the remaining term of the agreement, Concessionaire shall replace a minimum of two (2) golf carts per golf course, for a total of no less than four (4) golf carts replaced for the 2020 and successive seasons, by no later than May 15th, 2020, and by no later than May 15th of successive seasons. Replacement Golf Carts shall be purchased in new or like new condition, and substituted into the golf cart fleet for each course in place of the poorest conditioned existing golf carts.

Should the City elect to renew the Concession Agreement past the current term, Concessionaire shall continue Golf Cart Fleet replacements on a replacement schedule of a minimum of one (1) golf cart per golf course, for a total of no less than two (2) golf carts replaced per year, and by no later than May 15th yearly. Replacement Golf Carts shall be purchased in new or like new condition.

**B. COST OF SERVICES AND CAPITAL IMPROVEMENT FEES:**

The Concessions herein granted to maintain the Concession premises and operate a golf program thereon are to be carried out at the Concessionaire’s own cost, risk, profit, and expense. Prior to February 15 of each year, Concessionaire shall provide a complete list of proposed services and fees to be charged at the golf courses to the Pocatello Parks and Recreation Director who shall forward the same to the Golf Advisory Committee for its review. Fees shall at all times be competitive with comparable facilities in the State of Idaho. All golf course daily/annual greens fees are subject to the City resident discount resolution unless specifically exempted by the City Council. Any round of play is also subject to a one dollar ($1.00) per round charge which shall be delivered to the City for deposit in the City’s Golf Course Capital Improvement Fund. The City shall add the golf courses to the City’s overall long-range capital improvement plan. The one dollar ($1.00) per round will be incorporated into the daily greens fees. Concessionaire and
the City shall designate an amount to be charged as a capital improvement fee on all seasonal passes sold, which amount will be collected at the time of the sale. The seasonal pass capital improvement fee for the first and subsequent years of the agreement renewal, unless otherwise re-negotiated, shall be $30.00 per season pass. Any future capital improvement fee increases shall be subject to further negotiation between the City and Concessionaire. For the first year of this agreement renewal, the City and Concessionaire agree to the following adjustments to season pass fees:

<table>
<thead>
<tr>
<th>Pass Type</th>
<th>Resident</th>
<th>Non-Resident</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Season Pass</td>
<td>$725.00</td>
<td>$765.00</td>
</tr>
<tr>
<td>Combo/Couples Season Pass</td>
<td>$1,050.00</td>
<td>$1,150.00</td>
</tr>
<tr>
<td>Senior Season Pass (ages 65 and up)</td>
<td>$510.00</td>
<td>$550.00</td>
</tr>
<tr>
<td>Senior Combo/Couples Season Pass</td>
<td>$850.00</td>
<td>$925.00</td>
</tr>
<tr>
<td>College Season Pass</td>
<td>$450.00</td>
<td>$500.00</td>
</tr>
<tr>
<td>High School Anytime Season Pass</td>
<td>$240.00</td>
<td>$300.00</td>
</tr>
<tr>
<td>High School M-Th. Season Pass</td>
<td>$150.00</td>
<td>$200.00</td>
</tr>
<tr>
<td>Family Pass (2 adults &amp; immediate family members 18 yrs. &amp; younger in same household)</td>
<td>$1,300.00</td>
<td></td>
</tr>
</tbody>
</table>

*Note: season pass fees listed above are inclusive of the $30 per season pass capital improvement fee.

Notwithstanding anything to the contrary set out elsewhere in this Agreement, the parties agree that all fees in years #2 - #5 of the agreement renewal may be increased annually by the Concessionaire up to the annual inflation rate amount as measured by the Western Consumer Price Index, rounded upward to the nearest half-dollar, without the City’s consent or approval.

Any increase in fees for golf services in years #2 - #5 of the agreement renewal that are in excess of the above limits on rates or fees shall be submitted to the Golf Advisory Board Committee for review and recommendation to the City Council for their final decision. The City also reserves the right to control the costs of golf course usage by School District #25 golf teams for its practices and competitions.

The Concessionaire agrees that the character of services shall be the best obtainable and shall give priority consideration to the public’s convenience and continual use of the premises in a sanitary and orderly manner. The City expressly reserves the right to object to the character of services and the condition of the Concession premises and/or the facilities, fixtures, furnishings,
and equipment located therein and thereon, and to order the objectionable services and conditions discontinued or remedied at the Concessionaire’s expense.

8. **ACCEPTANCE OF PREMISES BY CONCESSIONAIRE.** The Concessionaire has accepted the premises as is. The Concessionaire agrees to return the premises and the facilities, fixtures, furnishings, and equipment not owned by the Concessionaire to the City in a condition as good as, or better than, when accepted by the Concessionaire, reasonable wear and tear excepted.

9. **CITY’S RIGHT TO MAINTAIN PREMISES.** The City reserves the right to enter upon the Concession premises at any reasonable time in order to ensure compliance with the terms of this Concession Agreement. The City reserves the right to inspect, investigate, and survey the Concession premises as deemed necessary, and reserves the right to do any and all work of any nature necessary for preservation, maintenance, and operation of the premises. The Concessionaire shall be liable for all expenses incurred by the City for work done by the City in order to preserve, maintain, and operate the Concession premises, when, after giving notice of default as provided in paragraph 26, such work is necessary to remedy the Concessionaire’s negligence or non-compliance with the terms of this Concession Agreement.

10. **GOLF ADVISORY BOARD:** The Golf Advisory Board shall be appointed by the Mayor and approved by the City Council. The Concessionaire, the City’s Parks and Recreational Director, and one City Council member shall be standing members of the Golf Advisory Committee.

    Should the City decide to organize and hold such meetings, they may be held monthly or as otherwise needed (upon the request of the City’s Park and Recreation Director) and shall include discussions of the golf programs and improvement and maintenance of the facilities provided under this Concession Agreement. Minutes thereof shall regularly be transmitted to the Mayor and City Council for their review. Concessionaire shall report to the Committee monthly and annually, the following information regarding play: a summary of daily attendance, greens fees, seasonal passes, cart usage, and tournament/special events.
11. **UTILITY SERVICE PAYMENTS AND GOLF COURSE IRRIGATION GUIDELINES.**

A. **UTILITY SERVICE PAYMENTS:**

The Concessions herein granted to maintain the Concession premises and operate a golf program. The Concessionaire shall pay all charges for garbage collection, sewer service, water used in the clubhouse/pro shop, gasoline, heating oil, natural gas, electricity, business telephones, telephone answering services, and all other commodities and utility services provided to the Concession premises.

Regarding annual water consumption used to irrigate the golf courses, in lieu of monthly billings, the City shall be compensated per a percentage of monthly base payment and percentage of operational revenues received, as outlined in Section 3 above. Golf course irrigation water consumption compensation percentage received by the Water Fund shall be 53% of total annual Concession Agreement revenues received by the City, the remaining 47% of total annual Concession Agreement revenues received by the City shall compensate the Recreation Fund.

Concessionaire shall be responsible for all costs associated with the maintenance of the infrastructure/utility lines inside the boundaries (property lines) of the golf courses, provided however, the City shall be responsible for all costs associated with the maintenance of the following: (1) water lines/valves on the south side of hole number 17 at the Riverside Golf Course (which were covered by asphalt during the prior contract term); (2) other issues which may arise in regards to the Riverside Golf Course #17 “Water Hazard” created by the City in 2011, and as outlined in the First Addendum to Concession Agreement dated January 1, 2011; (3) water lines/valves not currently used by the Concessionaire; and (4) water lines/valves for which the access is impeded by the future acts or omissions of the City. The City shall carry out its maintenance responsibilities in a prompt and expeditious manner so as to not interrupt the revenue generating activities of the Concessionaire.

B. **GOLF COURSE IRRIGATION GUIDELINES:**

City of Pocatello / FORE Golf, Inc. – Concession Agreement Renewal, Page 22
As maintenance and operational stewards of the City’s Golf Courses (2) per terms and conditions of Concession Agreement, Concessionaire shall adequately irrigate both courses to maintain proper playing conditions for facilitation of community golf services, and also to ensure the overall and long-term conditional integrity of these City recreational system amenities. Concessionaire shall also take all measures possible to, 1) conserve irrigation water resources at both courses, and 2) minimize the impact of golf course irrigation on the City’s municipal water system capabilities, including but not limited to:

- Irrigation control systems at each Golf Course shall at all times be tied into and linked with the weather stations at each facility.

- Golf course watering levels shall at all times be determined solely by weather station provided and mandated Evaporative Transporation (ET) information communicated directly to the irrigation control systems at both courses.

*NOTE*: it is understood and agreed upon by both the City and Concessionaire that special circumstance watering during periods of fungicide application, and fertilization of greens and tee box areas shall be excepted.

- Golf Course watering schedules shall be spread out and administered in such a way as to utilize the full available watering window, generally agreed upon by both the City and Concessionaire to be approximately one-half hour after sunset, and until approximately one-half hour prior to sunrise daily, unless the weather station provided Evaporative Transporation (ET) information communicated to the irrigation control systems during peak seasonal watering periods mandate an extended water window, generally agreed upon by both the City and Concessionaire to be approximately 9:00pm until no later than approximately 7:30am daily.

*NOTE*: Concessionaire shall not over-ride weather station mandated ET information communicated to the irrigation control systems, nor shall Concessionaire over-ride programmed watering schedules so that the full daily watering window is not utilized, subject to penalty of $100.00 daily for either such infraction, and until such time as weather station mandated watering levels, and/or full watering window utilization is corrected/ restored.
• Concessionaire shall immediately notify City of any issue in communication between weather stations and irrigation control systems, so that they can be immediately addressed and rectified.

• Concessionaire shall also take all opportunities available to not utilize the central irrigation systems at each course, whenever natural precipitation patterns allow for such.

• Irrigation of the Golf Courses shall be managed by the Concessionaire on a daily and on-going basis, under the oversight of the Parks Superintendent and/or Parks Department irrigation specialist designee. Concessionaire shall meet on site at each course with the Parks Superintendent and/or Parks Department irrigation specialist designee on an as needed basis, and at a minimum of every two weeks during the golf course irrigation season to discuss and verify proper weather station communicated course watering status and levels, as well as to immediately address any course irrigation issues which may arise.

• Concessionaire shall take necessary measures to ensure prompt and expeditious repair of sprinkler head and/or line break issues.

• Should unexpected circumstance arise, such as pressure issues, line breaks or the like, which necessitate location specific course watering at either golf course in addition to mandated weather station/ET levels, Concessionaire shall communicate those circumstances immediately to the Parks Superintendent and/or Parks Department irrigation specialist designee for permission, as well as for inspection and resolution of any potential issues.

• Parks Department staff shall communicate and work with Water Department staff on an on-going basis, to address all water delivery system issues and concerns, and to fine tune water delivery system operation wherever possible, and maximize water resource conservation.

12. **COMPLIANCE WITH LAWS.** The Concessionaire shall strictly comply with all Federal, State and local laws, rules, regulations, and ordinances, including those governing the distribution or sale of beer, wine or liquor. The Concessionaire agrees not to permit or allow any
illegal business, trade or occupation in or on the Concession premises and shall not permit the premises to be occupied by or used for any immoral or illegal purposes.

13. **INDEMNIFICATION.** Concessionaire agrees that it will at all times maintain Worker’s Compensation coverage for the benefit of its employees, and adequate liability and property damage insurance as specified in Section 14 below covering the activities of the Concessionaire, its agents, servants and employees, on the leased premises. Concessionaire further agrees to defend, indemnify, and save the City, its agents, employees and public officials, harmless from any and all claims or causes of action of any nature whatsoever arising out of the activities and operations of the Concessionaire, its agents, servants, invitees, officers, and employees, in connection with this Concession Agreement.

14. **INSURANCE.** In order to effectuate the foregoing indemnification provisions, the Concessionaire shall maintain insurance coverage as follows:

A. Concessionaire shall purchase a comprehensive liability insurance policy in the amount of $1,000,000 combined single limit to indemnify City from any and all public liability claims. Further, such policy shall include coverage for fire legal liability to repair or replace the demised premises. City shall be named as an additional insured or be acknowledged by Concessionaire’s insurance carrier as a covered entity under the terms of said policy. Moreover, the Concessionaire is required to put its surety on notice, that said surety may not change or cancel the existing insurance policy with Concessionaire without first giving the City of Pocatello, at least thirty (30) days written notice.

B. The City does not provide insurance that will cover the Concessionaire’s personal property which might be present at the demised premises. Concessionaire may purchase personal property insurance in an amount sufficient to insure any and all Concessionaire’s personal property which might be used in Concessionaire’s operation of the business or which might be present on the premises. In the event Concessionaire elects to forego maintaining personal property insurance, and Concessionaire suffers loss
of personal property stored on leased property, City will not be held responsible due to Concessionaire’s lack of personal property insurance.

C. If applicable, Concessionaire shall purchase Worker’s Compensation insurance or the equivalent as required by Idaho Code.

D. An Accord Certificate of Insurance evidencing compliance with the foregoing insurance requirements shall be filed with the Clerk of City of Pocatello prior to or at the time of execution of this Concession Agreement. The above described insurance shall contain contractual coverage sufficiently broad to insure the provisions of Section 13 “Indemnification.” The Concessionaire’s failure to maintain insurance shall be a basis for immediate termination of this Agreement.

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

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

17. **ACCOUNTING RECORDS.** The Concessionaire shall provide the City with a full, true and correct account of all its receipts and disbursements. The Concessionaire shall record all daily sales which record shall identify the date of sale and the amount of each transaction. Duplicate slips on all bank deposits shall be kept on file and all accounts resulting from this Concession Agreement shall be paid by check, credit or debit card. The Concessionaire shall provide the City Treasurer with a profit and loss statement, a balance sheet, and a statement of changes in financial position, prepared in accordance with the generally accepted accounting
principles, covering each annual season, by an independent public accountant, no later than March 31 of each year. In addition, the Concessionaire shall provide the City a detailed list of aged accounts payable, accounts receivable, and a summary of officers’ compensation and/or owners’ draw and monthly gross revenue report.

(A) Late Charges and Interest: Concessionaire acknowledges that if the Concessionaire fails to provide financial reports or statements listed above before March 31st of each year. In the event the Concessionaire does not timely provide the financial reports or statements the City shall provide the Concessionaire with a 20 day notice of default specifying the default. If the default is not cured by the Concessionaire within the 20 day notice period it shall pay to the City the sum of $1,000.00 as a late charge. The Concessionaire and the City agree this late charge is not a penalty but represents a fair and reasonable estimate of the costs the City will incur by reason of a late reporting of financial reports or statements. The payment of said late charge shall be required to cure the default occurring by reason of the failure of Concessionaire to timely provide financial reports or statements. All amounts not paid by Concessionaire when due shall bear interest at the rate of eighteen percent (18%) annual percentage rate.

(B) The City’s agents shall have the right, at all reasonable times, to examine and inspect the above records and other books and records of the Concessionaire bearing upon or connected with the Concession Agreement, to determine the Concessionaire’s compliance with the provisions of this Concession Agreement. The City will keep the information in the financial reports confidential unless the City is required to reveal said information pursuant to Court Order, the State of Idaho Public Writing Laws, or the Federal Freedom of Information Act.

(C) The City has the right, upon reasonable advance request, to perform at its expense an independent audit of Concessionaire’s financial records. Concessionaire shall cooperate with the City in effectuating the independent audit of its financial records.
18. **PERMITS AND LICENSES.** The Concessionaire shall obtain and maintain at its own expense any permits and licenses that may be required by competent authority for the operation of this Concession.

19. **CONSEQUENCES OF FRAUD.** If, as a result of any audit or other investigation, fraud, or other legal misconduct can be established against any employee of the Concessionaire, then, upon notice in writing by the City setting forth the circumstances relative to the fraudulent action or misconduct, the Concessionaire shall immediately discontinue the services of that employee. If it is established that the Concessionaire took fraudulent action by not making a proper accounting as required above, then such action shall be just cause for immediate termination of this Concession Agreement. Such termination shall not release the Concessionaire from payments required to the City, which may have accrued.

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

21. **CONCESSIONAIRE’S INDEPENDENT CONTRACTOR STATUS.** It is understood and acknowledged by the parties that the relationship of the Concessionaire to the City is that of an independent contractor. The Concessionaire shall have no authority to employ any person as an employee or agent for or on behalf of the City for any purpose. Neither the Concessionaire nor any person engaging in any work relating to this Concession at the request of or with the consent of the Concessionaire, shall be deemed an employee or agent of the City, nor shall any such person or persons represent himself, herself, or themselves to others as an employee or agent of the City.

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

22. **CONCESSIONAIRE’S EMPLOYEES.** The Concessionaire shall operate this Concession personally or shall employ sufficient and qualified personnel to operate the Concession in a businesslike manner. Each golf course shall be staffed with at least one (1) Class A PGA Professional, along with other personnel adequate for the operation of lunch counters, driving ranges, and pro shops. Concessionaire shall employ a minimum of one (1) Class A member of the Golf Course Superintendents Association of America (GCSAA). In the event of a voluntary or involuntary termination of a Class A PGA Professional or Class A GCSAA member places Concessionaire out of compliance with this paragraph, Concessionaire shall immediately exercise its best efforts to come into compliance with this paragraph. The Parks and Recreation Director may waive, in whole or in part, the requirements of this paragraph.

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

23. **PARKS AND RECREATION DIRECTOR CITY’S REPRESENTATIVE.** The Parks and Recreation Director of the City, working with the advice of the Golf Advisory Committee, shall represent and manage the City’s interest in the Concession premises. The Director may make reasonable written requests regarding the operation of this Concession to ensure compliance with the terms of this Concession Agreement, with which requests the Concessionaire shall comply.

24. **NON-ASSIGNMENT.** This Concession Agreement shall not be assigned in whole or in part nor shall the Concession premises or any part thereof be sublicensed, nor shall any right or privilege herein granted to the Concessionaire be sold, transferred or assigned, without the prior written approval of the City. Any such transfer, sale or assignment, whether voluntary or involuntary, without the written approval of the City, shall be void and shall constitute grounds for the cancellation of this Concession Agreement at the option of the City.
25. **MODIFICATIONS OF LICENSE.** This Concession Agreement sets forth all of the agreements between the parties hereto, and no change, modification, or amendment thereof shall be valid and binding unless set forth in writing and signed by the City and the Concessionaire.

26. **TERMINATION FOR BREACH OR DEFAULT.**

(A) If, in the judgment of the City, the Concessionaire breaches or is in default of any term of this Concession Agreement, the City shall give the Concessionaire written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the Concessionaire fails or refuses to take reasonable steps to remedy such unsatisfactory performance or default within fifteen (15) days after receipt of said notice, the City may terminate this Concession Agreement. If such breach or default is incapable of being remedied, the City may terminate the Concession Agreement granted herein upon written notice to Concessionaire of the breach or default.

(B) If, in the judgment of the Concessionaire, the City breaches or is in default of any term of this Concession Agreement, the Concessionaire shall give the City written notice specifying with reasonable particularity the unsatisfactory performance or default. If such breach or default is capable of being remedied and the City fails or refuses to remedy such unsatisfactory performance or default within fifteen (15) days after receipt of said notice, the Concessionaire may seek whatever remedy is available at law or in equity.

27. **DESTRUCTION OF PREMISES.** In the event the Concession premises are damaged by fire or other casualty to such an extent that the continued use of the premises by the Concessionaire is not desirable, the City or the Concessionaire may terminate this Concession Agreement. The City may, but is not obligated to, repair or rebuild the Concession premises. In that event, if any portion of the original Concession Agreement period remains, the Concessionaire, upon written notice, shall resume operation of the Concession in accordance with this Concession Agreement. The Concessionaire may apply to the City Council for payment relief if a destruction event occurs on the licensed premises.
28. **REMOVAL OF PROPERTY ON TERMINATION.** In the event this Concession Agreement expires or is terminated as herein provided, the Concessionaire shall immediately vacate the Concession premises and shall remove (a) all fixtures and personal property not on the inventory in Exhibit “B”, (b) all fixtures and personal property not purchased to replace such inventory in Exhibit “B”, and (c) all fixtures and personal property in which Concessionaire holds actual title. Should the Concessionaire fail to remove or dispose of such property as herein provided, the City may consider it abandoned and may claim proper title to it or dispose of the same at the Concessionaire’s expense.

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

29. **LIENS AND ENCUMBRANCES.** The Concessionaire shall keep the Concession premises, including all City-owned facilities, City-owned furnishings, City-owned fixtures, City-owned equipment and other City-owned property therein and thereon, free and clear from any liens and encumbrances arising from or growing out of the Concessionaire’s use of the Concession premises. At the City’s request, the Concessionaire shall furnish the City Treasurer with written proof of payment of any item which might constitute the basis for such a lien on the premises, facilities, fixtures, furnishings, equipment or other property.

30. **SECURITY FOR PERFORMANCE.** As security for the performance of its obligation under this Concession Agreement, the Concessionaire must annually obtain a $100,000.00 minimum performance and payment bond to guarantee this portion of payments to the City as set out in Paragraph 3 and the faithful performance of Concessionaire’s duties as provided in this Concession Agreement.

If the Concessionaire defaults or breaches any provisions of this Concession Agreement, including, without limitation, those provisions relating to the payment of monies to the City, the City may make demand upon the performance surety bond for payment of any sum in default or for the payment of any amount which the City may spend or become obligated to spend by
reason of the Concessionaire’s breach or default, or to compensate the City for any other loss, cost, damage, or expense which the City may incur or suffer by reason of the Concessionaire’s breach or default.

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

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

32. **THIRD GOLF COURSE.** In the event the City subsidizes the construction or operation of a third municipal golf course, the parties hereto agree to modify this Agreement to provide the same subsidies, or equal value of subsidies, to the Concessionaire as are provided to a third party. For example, if a third party were granted reduced financial obligation terms, the Concessionaire would be granted the same financial obligation terms.

33. **NON-WAIVER OF BREACH.** The waiver by the City of any breach by Concessionaire of any provision contained in this Concession Agreement shall not be deemed to be a waiver of such provision or any subsequent breach of the same. The acceptance of any payment by the City shall not be deemed to be a waiver of any prior occurring breach by the Concessionaire regardless of knowledge by the City of such prior existing breach at the time of accepting such payment.
34. **WRITING IS ENTIRE AGREEMENT.** This Concession Agreement constitutes the entire agreement between the parties. No evidence of any prior or contemporaneous agreements, written or oral, may be used to modify the express terms of this writing.

35. **CAPTIONS FOR CONVENIENCE ONLY.** The captions herein are for convenience only, and do not limit or amplify the language of the sections following.

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

37. **JURISDICTION AND VENUE.** Any action or proceeding relative to this Concession Agreement shall be maintained in the Sixth District Court, County of Bannock, State of Idaho.

38. **CORPORATE AUTHORITY.** Any individual or individuals executing the within document on behalf of any corporation which is a party hereto, hereby acknowledge and represent that he, she, or they have the power and authority to so bind the corporate authority, and that such authority was conferred by an act of the Board of Directors of such corporate authority, unless the binding of any such corporation is within the power of the person or persons executing this document on such corporation’s behalf. In the event that the party or parties executing this document on behalf of any corporate party hereto, do not have authority to so bind the corporation for any cause or reason, then such person or persons shall be personally liable under the terms hereof.

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

   City of Pocatello  
   Attn: Parks and Recreation Director  
   P.O. Box 4169  
   Pocatello, ID 83205

   FORE Golf, Inc.  
   Attn: Jerold Myler  
   7747 Prospector Hollow  
   Pocatello, ID 83201

Notice shall be complete upon receipt, unless the recipient ignores or refuses to sign for the certified letter, in which event notice shall be deemed to have been completed on the first attempted delivery by the United State Post Office.
40. **ATTORNEY’S FEES UPON BREACH.** In the event it becomes necessary for either party to enforce the terms of this Concession Agreement, the prevailing party shall be awarded by a sum which will reasonably compensate it for the attorney's fees and costs incurred by such party to enforce the terms of this agreement. In the event attorney fees are awarded by a Court of law, the parties agree that a reasonable rate for attorney fees is $150.00 per hour.

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

CITY OF POCATELLO, a municipal corporation of Idaho

BRIAN C. BLAD, Mayor

ATTEST:

RUTH NEWSOM, City Clerk

FORE-GOLF, INC., an Idaho Corporation

GREG ALLBRIGHT, President

JEROLD MYLER, Secretary
STATE OF IDAHO  

County of Bannock  

On this ___ day of ______________, 2019, before me, the undersigned, a Notary Public in and for the State, personally appeared Brian C. Blad and Ruth Newsom, known to me to be the Mayor and City Clerk, respectively, of the City of Pocatello, a municipal corporation of Idaho, who executed the foregoing instrument on behalf of said municipal corporation, and acknowledged to me that such corporation executed the same.

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

(SEAL)  

NOTARY PUBLIC FOR IDAHO  
Residing in: Pocatello, Idaho  
My Commission Expires: ______________

STATE OF IDAHO  

County of Bannock  

On this ___ day of ______________, 2019, before me, the undersigned, a Notary Public in and for the State, personally appeared Greg Allbright and Jerold Myler, the authorized agents for FORE-Golf, Inc., an Idaho Corporation, known to me to be the person who executed the foregoing instrument, and acknowledged to me that they executed the same.

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

(SEAL)  

NOTARY PUBLIC FOR IDAHO  
Residing in: ____________________  
My Commission Expires: ______________
EXHIBIT “B”

INVENTORY OF CITY OWNED FACILITIES

The City of Pocatello is the owner of all of the existing buildings, including all the fixed equipment, at both golf courses. Fixed equipment includes but is not limited to HVAC equipment, bathroom/plumbing fixtures, counters, grill hood and fire suppression equipment, etc.

In addition to the above named items, the City of Pocatello owns the following equipment in the food concession areas:

- Highland Golf Course: 5 tables, 23 chairs, 8 barstools and 1 folding table
- Riverside Golf Course: 5 tables, 22 chairs and 9 barstools
- Highland Golf Course: 1 Petroleum Storage Tank with two storage sections
- Riverside Golf Course: 1 Petroleum Storage Tank with two storage sections

The City also owns the current ball washers at both golf courses.

The City does not own any of the golf course maintenance equipment. The equipment is owned by the current Concessionaire, FORE Golf, Inc.

The current tee signs, tee benches, and any other concession equipment are owned by the current Concessionaire, FORE Golf, Inc.
MEMORANDUM

TO:        Brian C. Blad, Mayor; Members of the City Council
FROM:      Rich Diehl, Deputy City Attorney
RE:        Bid Award for Fairground Sanitary Sewer Extension
DATE:      July 10, 2019

I have reviewed the documents which pertain to the Engineering’s Bid Awards for above-referenced project and they are in order. I was present during the opening of the bids and it is appropriate award the bid to A+ Contractors, LLC.

It is appropriate to award the bid to A+ Contractors since they meet specifications and were the lowest responsive bidder. I would also recommend that the Council authorizes the Mayor to sign any and all documents necessary to allow for the completion of this project.

As always, if you have any questions, please feel free to contact me.
AGENDA ITEM NO.  

EXECUTIVE SUMMARY

FAIRGROUNDS SANITARY SEWER EXTENSION PROJECT

TO: Mayor Blad and City Council Members
FROM: Merrill Quayle, P.E., Public Works Development Engineer
Cc: Jeff Mansfield, P.E., CFM, Public Works Director
Levi Adams, WPC Superintendent
DATE: Meeting Date – July 18, 2019
SUBJECT: Fairgrounds Sanitary Sewer Extension Project

BACK GROUND
The Fairgrounds Sanitary Sewer Extension Project plans and specifications were prepared by and under the City Engineering Department’s direction. A sealed bid opening was held June 26, 2019 at 2:00pm, Pocatello City Hall, Paradise Conference Room. The work will consist of installing a 24-inch sanitary sewer pipe and appurtenances, asphalt patch back, and stormwater improvements on Fairgrounds Road between Chubbuck Road and Saratoga.

Bid were opened for the project on June 26, 2019, with the following results:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A+ Contractors LLC, Soda Springs, Idaho</td>
<td>$895,434.70</td>
</tr>
<tr>
<td>DePatco Inc, Idaho Falls, Idaho</td>
<td>$1,106,396.50</td>
</tr>
<tr>
<td>Engineer’s Estimate</td>
<td>$985,979.50</td>
</tr>
</tbody>
</table>

STAFF RECOMMENDATION
A+ Contractors LLC was the lowest responsive bid in the amount of $895,434.70 this is approximately 10.0% below the engineer’s estimate at $985,979.50.

Staff recommends that City Council accept the low responsive bid and authorize execution of the Contract Agreement between A+ Contractors LLC and the City of Pocatello for the Fairgrounds Sanitary Sewer Extension Project in the amount of $895,434.70, subject to Legal Department review.