Cascade River LLC
19 Warm Lake HWY, Cascade ID 83611

May 8, 2020

Via E-mail

Mayor Nissula and
Cascade City Council
105 S. Main
Cascade, ID 83611

Re The River District - Applications for Annexation, Planned Unit Development and Preliminary Plat

Mayor and Council

This letter is being submitted for the record in the above referenced matter and is delivered directly to the Mayor and Council to assure their opportunity to review this letter and the enclosures prior to the May 11 public hearing. We ask that it and its enclosures be posted to the city's website so that it is available for review by the public. We wish we could have submitted this letter earlier, but as of this writing, we still have not received from the city a complete and final city proposed development agreement, something we have been asking for since the middle of March.

We are beginning to believe that it will not be possible to pursue this development under the current city administration. Based on the partial proposals for the development agreement we have received, we know that the staff proposal will not work and that we will not sign it. That proposal, with its substantial front loaded fee payments to the city, creates too great a financial risk without knowing the marketability of the project. If the project is to move forward, a different approach will need to be taken to finance the infrastructure improvements the city desires – one that allows for payments to be made to the city on an installment basis as the project develops and we begin to realize some revenue from lot sales.

To be more specific, the current staff proposal requires us to pay to the city, upon approval of the first phase final plat, over $625,000 in sewer connection fees and a flat fee of $200,000 for the city's water system. And, the sewer and water fees are not all we are asked to pay for. Staff proposes that we also pay half the cost of the city's facilities plans - about $60,000. We did offer to help the city pay for those plans, but not in addition to all the other up-front fees. We have already spent approximately $284,500, over half of it on engineering and legal fees, in an attempt to get through the process. We will, of course have significant additional costs to develop the first phase of the project, including, for example, a sewer lift station for the city at a cost in excess of $500,000 before we can sell a single lot for which we assume there will be market, but will not know and cannot confirm until we start to sell lots. We

are more than willing to make reasonable contributions to the community and help fund needed infrastructure improvements, but those contributions need to be spread over the life of the project, not in large up-front cash payments. We will not pay all that the city staff is attempting to extort by requiring us to pay un-needed up-front fees.

We have proposed an alternate approach – one that funds the city's desired infrastructure improvements, but a little later in time after we have begun to generate some lot sales. That approach was embodied in our proposed development agreement delivered to the city attorney on March 2, 2020 and to the city council on March 9, 2020 (a copy of which is included with this letter) and contemplates that upon final plat approval we post a letter of credit in the amount of the cost of infrastructure improvements required to service the first phase (or some portion of it), that we develop the first phase of the project and begin selling lots, paying sewer and water connection fees as building permits are issued (as is normal), and when a certain number of building permits have been issued and the city has collected its normal connection fees on those permits, we help the city pay for the required infrastructure improvements (for the sewer system, that would be installation of aeration; for the water system that remains uncertain). When the improvements are actually needed the city will have funds available from its collected connection fees and we will contribute additional funds. If we fail to pay the additional funds as agreed, the city can collect on the letter of credit.

The precise proposal made in our last proposed development agreement will apparently not now work for a couple of reasons. First, despite statements made by the city's consultants that there were 200 to 250 sewer EDUs available in the system (Mr. Scoresby at the December 5, 2019 city council work session and Mr. Howard in Exhibit D to the staff report for the January 27, 2020 council public hearing, a copy of which is included with this letter) the city's position now is that there are less than 100 EDUs available and that the city will only commit 50 of them to this project. We did understand at the January city council meeting that aeration would be required at some point during the first phase, but we do not understand how we went from the 200 to 250 then available EDUs to only 50, and are suspicious about the explanation - Mr. Howard says that Mr. Scoresby mis-spoke and Mr. Scoresby denies saying it at all – and are certainly frustrated that we have devoted so much time and effort to developing a plan based on that information. But apparently that is where we are. Second, assuming that there really are less than 100 EDUs available, in order to make that concept work, we will likely need to reduce the number of lots in the first phase in order to avoid having a large portion of the phase sanitary restricted. The details of that concept will need to be developed. What we now need from you, the mayor and council, however, is instruction to staff to work with us on that concept.

There are, unfortunately, other issues raised by the city's proposed development agreement that need to be addressed, including the recently added requirement that we conduct a "city traffic impact model and analysis" as a condition of final plat approval. This new requirement comes much too late in the process and subjects us to the potential that additional, "mitigation" (meaning cost) will be required of us, the scope of which is unknown and for which we cannot plan. Although the city attorney claims that this requirement has long been contemplated and was raised by the planner early on, the first time this requirement has appeared

in staff comments or reports was in the planner's March 6, 2020 comments on the ITD approved Traffic Impact Study. If this was something the planner had in mind all along, it could and should have been raised long ago, at the beginning of the process rather than now, near the end. And, it bears mentioning that in the planners staff report for the January 27 council hearing, and again orally at the hearing, the planner said she anticipated requesting no more reports or studies from us. Accordingly, we ask that the council delete that requirement.

There remain other issues to work out with the development agreement, such as why we would pay $625,000 for the sewer system and $200,000 for the water system and be promised only 50 EDUs for each which are only good for 2 years, or why we would give the city $200,000 for its water system without any justification offered by the city for that number, or why that $200,000 needs to be paid prior to the first final plat when the city engineer said at the March 12 meeting between staff and the applicant that the city's system could serve the first phase of the project, or why we should prepare and pay for a separate storage plan for the water system rather than include that issue in the facilities plan, or why we would pay for half of the city's cost for the sewer facilities plan when the city engineer said at that same March 12 meeting that we would not need to participate beyond modelling the existing sewer line which is intended to serve the project, or why we should pay for snow removal for the majority of every phase when the fiscal impact analysis prepared for this project demonstrates that tax revenues to the city more than cover the city's anticipated costs, or why we should be required to submit successive plats on an annual basis when it has been made clear that at least the first phase will take longer than that to build out. Many of these issues might have been handled in further discussions with staff if only the city's proposed development agreement had been provided to us further in advance of the hearing, not in piecemeal fashion, and if we had any faith that city staff even wants to make a deal with us.

As a result of our frustration, we have also asked you, the council, to become more directly involved in the process by, for example, conducting work sessions where we, the applicant, can participate, rather than just the staff. These efforts have been blocked and rebuffed. When those efforts failed, we attempted to communicate with council through on record, written submissions which the city attorney has incorrectly deemed "ex-parte" communications, creating the impression that we have been engaged in improper or illegal activity, which is clearly not the case. Staff is irritated by our efforts to engage with the council, taking the view that we are trying to "go around" staff. We view it as efforts to seek input from the city's leadership when we think staff is out of line. So that you know we have tried to work with staff, I am including with this letter a recent e-mail exchange (in two parts) between our respective legal counsels as an example, in which some of these matters are addressed. You might find it interesting.

Finally, a few words about the city's recent invoices seem in order. We have recently been given a new invoice in an amount in excess of $39,000, which is apparently in addition the $60,000 invoice we were given in January. We paid over $26,000 of that earlier invoice for legal and engineering fees, but continue to object to the amounts sought for the contract planner. We do not believe we are obligated for those amounts since contract planner fees are not required to

be paid by an applicant under the city's code or resolutions or other adopted policies. City code section 12-12B-3does require applicants to reimburse the city for engineering services, but the contract planner is not an engineer and the work she has performed is not engineering services. We are also concerned that we cannot determine from the invoice just what work we are being charged for. In an attempt to determine that, our counsel has requested back up billings from the city attorney. When those materials are received we will be in a better position to make a judgment as to what we believe we are obligated to pay. We would be happy to discuss this issue with the council if given the opportunity.

For well over a year we have been trying to fulfill the City's requests for information to process our application and since August 2019 we have tried to work with staff to put a development agreement together. As we stand today, we do not believe we are much further along than we were in January and we doubt that we can get much further along without a significant change in approach.

Respectfully,

Cascade River LLC

F. Phillip Davis

Managing Member

Enclosures

Cc Matthew Johnson

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), entered into this ____ day of _______________, 2020, by and between the CITY OF CASCADE, IDAHO, a municipal corporation ("**City**"), and CASCADE RIVER, LLC, an Idaho limited liability company authorized to do business in the state of Idaho ("**Developer**").

RECITALS

This DEVELOPMENT AGREEMENT is predicated upon the following facts:

WHEREAS, Developer owns contiguous parcels of land approximately 122.4 acres in size currently within Valley County and more particularly described in **Exhibit A**, attached hereto and made a part hereof, and which is currently zoned "Agricultural" under Valley County's Zoning Ordinance (the "**Property**");

WHEREAS, Developer filed with the City a Request for Annexation of the Property and Zoning upon Annexation; a Preliminary Plat Application; and a Planned Unit Development Application that are being processed by the City file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 (collectively "Project Applications") and are for a development project named "The River District";

WHEREAS, Developer has requested that the Property be annexed into the city, and be zoned and developed in accordance with the applicable ordinances and regulations of the City and this Agreement;

WHEREAS, at City's request and as a condition of annexation, Developer, as the owner of the Property, agreed to submit the Property to a development agreement pursuant to Cascade City Code, Title 3, Chapter 7, and Idaho Code Section 67-6511A;

WHEREAS, City is a municipal corporation having all of the powers and authority granted municipalities under the laws of the State of Idaho, including, without limitation, the authority to contract (Idaho Code § 50-301), to annex (Idaho Code § 50-222), to zone parcels of real property (Idaho Code § 67-6511), and to enter into development agreements (Idaho Code § 67-6511A);

WHEREAS, City having held all lawfully required public hearings and meetings for consideration of said annexation request and this Agreement, and on the __ day of ____, 2020 City Council ("**Council**") approved the annexation request and zoning and land use applications, subject to this Agreement, and Council, on the ____ day of ________, 2020, adopted findings of fact, conclusions of law and a written decision with regard thereto;

WHEREAS, it is in the best interests of City that the Property be annexed into the City and be developed in accordance with the Applications as approved and this Agreement;

WHEREAS, Council has determined that annexation of the Property constitutes an orderly extension of City's municipal boundaries and property within the City's area of impact; that such annexation is (1) not in conflict with the comprehensive plan; (2) appropriately zoned with R-III

and C zoning designations as set forth in the Zoning Ordinance and Map; (3) complies with the requirements of all state statutes and city ordinances or as otherwise permitted in this Agreement; and (4) it is in the best interests of City to enter into this Agreement in order to provide for orderly annexation and development of the Property;

WHEREAS, Developer has agreed to the use restrictions and other limitations set forth herein upon the use and development of the Property and the zoning designation to be placed upon the Property;

WHEREAS, the intent of this Agreement is to protect the Developer's rights of use and enjoyment of the Property while at the same time mitigating any adverse impacts of the development upon neighboring properties and the existing community and ensuring the Property is developed in a manner consistent with City ordinances and in substantial conformance with the approved planned unit development and preliminary plat; and

WHEREAS, Developer and City enter this Agreement for the purpose of establishing certain rights and obligations of the parties with regard to annexation, zoning and development of the Property including limitations as to the use, development and design.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, Developer and City hereby mutually covenant and agree as follows:

1. <u>DEFINITIONS</u>. Throughout this Agreement, the following terms will be defined and certain restrictions and covenants are hereby placed upon the areas so defined, as follows:

1.1 "**City**" shall mean the City of Cascade, Idaho, a municipal corporation, acting by and through City's duly elected Council.

1.2 "**Developer**" shall mean Cascade River, LLC, an Idaho limited liability company, and its successors in interest to the Property.

1.3 "**Preliminary Plat/PUD Map**" shall mean and consist of the approved preliminary plat/PUD Map dated ____________, a copy of which is attached hereto as **Exhibit B** and shall be incorporated herein by reference.

1.4 "**Property**" shall mean that certain real property legally described in **Exhibit A**.

1.5 **"Project"** shall mean the development project known as The River District as approved by the City in file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01 and as described in this Agreement.

1.6 **"Project Applications"** shall mean City application file numbers ANNEX-19-01, ZON-19-01, PUD-19-01, and SUB-19-01.

2. <u>LEGAL AUTHORITY</u>. This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Cascade City Code Title 3 Chapter 7 and other applicable state statutes and city ordinances.

3. USES PERMITTED BY THIS AGREEMENT.

3.1 General. The Project will include a mix of residential and commercial uses as well as open spaces and pathways to create a mixed-use community. The uses allowed pursuant to this Agreement are those uses allowed in the R-III and C zones under City's Zoning Ordinance in effect on the date of approval of the Project and as described in Cascade City Code Sections 3-1-8 and 3-1-10, as applicable. Developer agrees that this Agreement specifically allows the uses described in the aforementioned sections of the Zoning Ordinance. No change in the uses specified in this Agreement shall be allowed without modification of this Agreement pursuant to the requirements of the City's Zoning Ordinance and Idaho Code. In the event Developer changes or expands the uses permitted by this Agreement without formal modification of this Agreement as allowed by the City's Zoning Ordinance, Developer shall be in default of this Agreement.

3.2 Residential Uses. The Developer is providing a variety of lot sizes in order to accommodate a mix of housing types and to attract a diversity of income levels and households. Developer shall be entitled to subdivide, construct, develop, market, sell and improve the following types of residential building lots and on approximately 80.45 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B**:

a. One hundred thirty-five (135) single family residential building lots with a minimum size of 8,000 square feet (the Single Family Lots) for detached single family homes;

b. Nine (9) single family "cottage" lots with a minimum lot size of 5,000 square feet (the Cottage Lots") for detached single family homes;

c. Forty-Three (43) townhome lots with a minimum size of 3,000 square feet (the "Townhome Lots") and maximum lot coverage of sixty percent (60%) for attached or detached residential townhomes;

d. Forty-eight (48) multi-family four-plex lots with a minimum size of 5,000 square feet (the "Four-plex Lots") and maximum lot coverage of sixty percent (60%) for residential four-plex buildings; and

e. Four (4) lots for multi-family buildings with up to sixteen (16) residential units each (the "Multi-family Lots") for multifamily residential buildings.

3.3 Commercial Uses. Developer shall be entitled to subdivide, construct, develop, market, sell and improve twelve (12) commercial building lots on approximately 6.17 acres substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B** for such uses as are permitted by the Cascade Zoning Ordinance.

3.4 Open Space/Common Lots. Developer shall be entitled to subdivide, construct, develop, and improve common/open space lots to be owned and maintained by one or more property owner associations for landscaping, pathways, picnic areas, ponds, wetland protection, snow storage, parking and drive aisles and similar such uses substantially as shown on the Preliminary Plat/PUD Map attached hereto as **Exhibit B**.

A total of at least twenty-five percent (25%) of the gross Project area shall be committed to such open space.

3.5 PUD Exceptions. Pursuant to Cascade City Code Section 3-2-6(C), the following exceptions to City Code have been granted for the Project:

a. Cul-de-sac Length. Cul-de-sacs may exceed 500 feet in length, but shall not be greater than 750 feet.

b. Parking. A minimum of 652 stalls combined for the multi-family area.

c. Lot Sizes and Maximum Coverage. Minimum lot sizes and maximum lot coverage shall be as specified in Section 3.2, above.

d. Setbacks. Setback requirements shall be as specified in Section 4.1, below.

e. Storage Areas. Developer is not required to provide centralized storage areas for boats, trailers, campers and other recreational vehicles or equipment.

4. BUILDING RESTRICTIONS.

4.1 Residential Setbacks. The following minimum setbacks shall apply to the buildings constructed on the residential lots:

	Front	Back	Side
Single Family Lots	20’	20’	15’
Cottage Lots	15’	15’	5’
Townhome Lots	10’	10’	0’
Four-plex Lots	15’	10’	10’
Multifamily Lots	15’	10’	10’

4.2 Commercial Setbacks. The following minimum setbacks shall apply to the buildings constructed on the commercial lots:

Front	15’
Side	0’
Back	0’

4.3 River Setbacks. All buildings in the Project shall be set back at least 50 feet from the ordinary high-water mark of the Payette River. This setback, when applicable, shall supersede any other minimum setbacks.

4.4 Height Restrictions. Building heights in the Project shall not exceed twenty five (25) feet, determined in accordance with the definition of the term "Height of Building" contained in Section 3.1.4 of the Cascade City Code.

4.5 Floodplain. Developer shall comply with the flood damage prevention regulations of the Cascade City Code Title 3, Chapter 5, as the same may be applicable to the Project.

4.6 Wetlands. Development of the Project shall be subject to approval by the US Army Corps of Engineers through the issuance of required permits, including any required Section 404 permit(s).

4.7 Design Requirements. Developer will comply with the following design standards:

Generally, building design shall comply with the design nature detailed in the submittal narrative as a part of the Project Applications. This includes maintaining a general rustic design, use of exposed beams, and use of neutral earth-tone colors to ensure the Project is in harmony with the natural context of its location. "Cookie-cutter" building design (repetitive and substantially similar adjacent designs) shall not be allowed. Such design standards shall also be specified for long-term preservation in the Project CC&Rs. No manufactured or mobile homes are permitted.

4.8 Wood Burning Stoves/Fireplaces. Developer will include language in the CC&R's restricting the types of wood burning stoves and fireplaces permitted to be installed to ensure that high efficiency, low emitting CO_2 stoves are used to minimize air pollution. Wood-burning stoves and fireplaces will not be permitted in the multi-family units and a restriction to such effect shall be included in the CC&Rs.

4.9 CC&Rs. CC&Rs are required to be prepared and recorded as applicable to the Project properties. Developer shall submit proposed CC&Rs to the City for review and comment prior to finalizing and recording such.

4.10 Propane/ Gas Tanks. Any household tanks for the storage of propane or other gases must be buried underground.

5. INFRASTRUCTURE IMPROVEMENTS. Developer shall engineer, construct, and otherwise provide, at Developer's sole expense (except to the extent otherwise set forth below), the following improvements, facilities and services (public and private) with each phase of the project in accordance with this Agreement. Developer hereby warrants all infrastructure improvements for one (1) year from acceptance thereof by the City.

5.1 Utilities. All utilities, including water, sewer, storm drainage, pressurized irrigation, cable, phone and electric shall be installed underground within the street rights-of-way, in easements or as otherwise shown on the approved construction plans for each phase of the Project. All utilities shall be installed in accordance with City improvement standards and as set forth in Cascade City Code Section 3-2-5 and other sections as may be applicable. Detailed engineered construction drawings and specifications for construction of such improvements shall be prepared by Developer and

approved by all applicable governmental entities prior to construction. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. All required off-site utility improvements must be completed as directed by the applicable governmental entity or as otherwise specified in this Agreement.

5.2 Streets and Highways.

a. Internal Project Improvements. All internal minor public streets will be constructed within a fifty (50) foot right-of-way with an improved surface twenty-six (26) feet in width, excepting the following: the portions fronting the Townhome Lots may be constructed within a forty (40) foot right of way with an improved surface twenty-six (26) feet in width; the main collector(s) shall be constructed within a one-hundred (100) foot right-of-way with an improved surface twenty-nine (29) feet in width, with a five (5) foot bicycle lane, for a total of a thirty-four (34) foot wide paved surface. All streets, roadways and walkways shall be designed and constructed as shown on the approved construction plans for each phase of the Project and in accordance with City standards. Prior to acceptance of any such improvements to be dedicated to City, City shall inspect and approve same and Developer shall provide City with "as built" drawings thereof. City shall approve and accept the dedication of all such improvements in the manner and at the time provided for by the ordinances, resolutions, policies and practices of the City as of the date of completion thereof. Developer retains all responsibility to maintain and upkeep such streets until time of final acceptance by the City. Upon completion of each of such improvements and acceptance thereof by City, such improvements shall become a part of the City's street system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above; provided, however, that Developer shall be responsible to provide snow removal for such improvements until such time as thirty five percent (35%) of the lots in the first phase have been sold to third party purchasers in order to assist the City with the maintenance costs thereof before tax revenues for such improvements are being assessed and collected.

b. State Highway Improvements. Developer shall comply with all access and intersection requirements of the Idaho Transportation Department (ITD) applicable to the Project and construct all improvements reasonably and necessarily required to mitigate traffic impacts of the Project as finally determined by ITD.

5.3 Lighting. Street lighting throughout the Project shall be in accordance with the approved construction plans for each phase of the Project. The lighting shall be installed in each block of the Property as the same is developed. All lighting must comply with the standards and purposes of the City dark sky ordinance, City Code, and regulations.

5.4 Water System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the water system.

Developer shall engineer, construct and extend, at Developer's sole expense, a drinking water distribution system throughout the Property and connect to the City's drinking water distribution system. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho,

Department of Environmental Quality, as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's drinking water system and the City shall assume all responsibility therefore subject to Developer's warranty.

The Parties understand that the City is without a current water system facility plan (Water Plan). Based on the information available, the existing system can service the first phase of the Project and likely more. Preliminary review indicates that additional storage or pumping may be needed before ultimate buildout of the Project. Therefore, the City plans to prepare a new facility study to determine future water system needs, including storage needs. To expedite the process for preparation and adoption of such Water Plan, Developer agrees to contribute to the City one half of the city's out of pocket costs (net of grants or sources other than city funds) of preparing the Water Plan, which shall be held in the Water Fund and dedicated for timely pursuit of the funding and preparation of such Water Plan. This new facility plan shall be completed prior to 2023 and the start of Phase 2 of the Project. For the Initial Phase of the Project, the City will commit 260 water system connections (equal to number of proposed Phase 1 connections). Further connections will be determined after the new facility plan is completed and any improvements that are needed are identified. The collected water connection fees for the Project, which shall be paid as, when and in the amounts required by the applicable ordinances and resolutions of the City, can be used by the city to fund these possible improvements.

Developer will perform and submit a water line model, at Developer's expense, to determine and confirm that the existing City twelve (12) inch water line anticipated to supply the Project can adequately provide required fire flows to the Project. This modeling must take place prior to the City Engineer signing the initial final plat.

All units within the Project must have individual unit-specific water meters, including all individual units within multi-unit buildings (fourplexes, apartments, etc.). Water meters must be of radio-read type and as reviewed and approved by the City in accordance with City standards.

5.5 Private Irrigation Water System. A private landscape irrigation system shall be installed by Developer to provide irrigation to all lots in the Project in accordance with the approved construction plans for each phase of the Project. Developer shall irrigate said lands using Developer's existing water rights and convey the water rights now appurtenant to the Property necessary therefore to the owners' associations created with regard to the Property or as provided in applicable law. Irrigation using the City water supply is not permitted, which shall be specified in the CC&Rs.

5.6 Wastewater System. In addition to the requirements set forth in Section 5.1, above, Developer shall be responsible for the following specific to the wastewater system.

a. Internal Project Improvements. Pursuant to City specifications, Developer shall engineer, construct and extend, at Developer's sole expense, the wastewater

collection system throughout the Property, including a lift station as reviewed and approved by the City Engineer. All such improvements shall be designed and constructed in accordance with the standards of the City and the State of Idaho, Department of Environmental Quality (DEQ), as applicable. Upon completion of each of such improvements and acceptance thereof by City, such improvements and the offsite improvements, if any, shall become a part of the City's wastewater system and the City shall assume all responsibility therefore subject to Developer's warranty set forth above.

b. Wastewater System Improvements. The Parties understand that the City is in need of an updated wastewater system facility plan (Wastewater Plan). Based on the information available the existing system can service the first phase of the Project and likely more. Preliminary review indicates that aeration and other improvements may be needed before ultimate buildout of the Project. The City is currently installing monitoring wells and working with DEQ to determine if the effluent from the existing rapid infiltration beds meets the requirements of the City's discharge permit. This monitoring and review will be completed in early 2021. Concurrently with this review the City shall prepare a Wastewater Plan to be completed in late 2021 that includes the results of the effectiveness of the rapid infiltration beds and recommended changes, if any, as a result of this review. This Wastewater Plan will also include a review of the rapid infiltration bed function for the increased flow rates resulting from the Project and future city growth. To expedite the process for preparation and adoption of such Wastewater Plan, Developer agrees to contribute to the City one half of the city's out of pocket costs (net of grants or sources other than city funds) of preparing the Wastewater Plan, which shall be held in the City's Wastewater Enterprise Fund and dedicated for timely pursuit of the funding and preparation of such Wastewater Plan. For the Initial Phase of the Project, the City will initially commit 200 wastewater system connections to the initial phase of the Project, reserving 50 connections to other potential users subject to the following additional requirements:

(1) Prior to the City Engineer signing the initial final plat, Developer shall post with the city a letter of credit in such form as the city shall reasonably determine in the principal amount of $236,500.00, said sum being approximately one-half of the estimated cost of installing aeration improvements proposed for the wastewater treatment plant as generally described in the City of Cascade Lagoon System Upgrade Memorandum dated November 15, 2019 prepared by T-O Engineers, which letter of credit may be drawn on if the Developer shall fail to perform its obligations set forth in Subparagraph (b), below; and

(2) When the City has issued a total of 150 wastewater connection permits to Developer, Developer shall pay to the City the sum of $236,500, said sum to be held in the City's Wastewater Enterprise Fund and dedicated to the cost of installing the aeration improvements described above. Upon receipt of said sum, City shall timely commence and diligently pursue to completion the contemplated aeration improvements no later than six (6) months after Developer's payment to the City. Developer may offer to provide in kind contributions to the installation of the aeration improvements (for example, labor, equipment, parts and the like), which shall in good faith be considered by the City. Developer shall be entitled to a refund from the City of any dollar amount paid to the city pursuant to this subparagraph b. which exceed one-half (1/2) of the actual cost

to the City of installation of the contemplated aeration improvements and Developer shall be entitled to a credit against its share of the cost of aeration improvements for the reasonable value of any in kind contributions. If the actual cost to install the aeration improvements exceeds $473,000.00, Developer and City shall negotiate in good faith Developer's reasonable share of such excess. Upon completion of installation of the contemplated aeration improvements the City shall commit an additional [60] wastewater system connections to the initial phase of the Project.

The Developer shall pay the wastewater service availability fees for the Project when and in the amounts required by the applicable ordinances and resolutions of the City until such time as the City has issued a total of 150 wastewater connection permits to Developer. Thereafter Developer shall be entitled to credit against future wastewater service availability fees in an amount equal to the amounts Developer has advanced to the City for the cost of the installation of the aeration improvements. Any wastewater service availability fees collected by the City from Developer for the first 150 wastewater connection permits (approximately $750,000) and any other potential users can be used by the City to fund its share of the cost of the contemplated aeration improvements. Further connections will be determined after the Wastewater Plan is completed and any improvements that are needed are identified.

The Parties understand and agree that the City is currently working with IDEQ to monitor and evaluate compliance with the requirements of the City's discharge permit. Any improvements to the existing system required as a result of such monitoring and evaluation, and not necessitated by Project development, will be the responsibility of the City and not a direct cost to the Developer.

Developer will perform and submit a wastewater line model, at Developer's expense, to determine and confirm that the existing City wastewater collection line anticipated to serve the Project has sufficient capacity to serve the Project. This modeling must take place prior to the City Engineer signing the initial final plat.

5.7 Landscaping. All landscaping improvements shall be in accordance with a landscape plan to be submitted to and approved by the City as a condition to final plat approval. This landscape plan must be certified by a professional landscape architect and shall include species sizes, quantities and location.

5.8 Stormwater. Developer shall comply with City Code and the requirements of any other agency having jurisdiction of stormwater management and control. Developer's stormwater plan shall be reviewed and approved by the city engineer and any other agency having jurisdiction thereof as and when required by Cascade City Code.

5.9 Pathways. All pathways and trails shall generally be in accordance with the City's Bicycle and Pedestrian Plan purposes and associated standards. Developer shall construct ten (10) foot wide pathways on either side of the main collector road and six (6) foot wide pathways elsewhere in the Project. Developer shall extend a pathway to the SH-55 right of way for connection to the City's pathway system. Pathways will be constructed of compacted gravel or appropriate paving material, with such design and

section to be reviewed and approved by the City. Pathways located within wetlands shall be approved by a USACE 404 permit and may be reduced in width and type to comply with USACE standards. For example pathways may be single track scraped earth trails within wetlands. All pathways and trails are to be owned and maintained as common areas and shall be the responsibility of the Owners' Association. All pathways and trails shall be made available for general public use.

5.10 Erosion and Sediment Control. Developer shall provide an Erosion and Sediment Control Plan, to be reviewed and approved by City staff, and which shall be made a part of the governing construction documents with which Developer must comply.

5.11 Phases. The Project will be completed in phases as generally proposed and presented on the approved Preliminary Plat/PUD Map. Phases may be combined or advanced to accommodate market, financing, site and other conditions in conjunction only upon notice of intent to do so to the City and with timely combination and advancement of any improvements required for such phase(s). Other alterations or delays to the Phasing Plan may only occur by appropriate amendment to this Agreement in accordance with the amendment process.

5.12 Performance Commitments. Developer shall provide to the City a financial guarantee of performance for all infrastructure improvements required to be provided by the Developer under this Agreement in accordance with the requirements of Cascade City Code Section 3-2-5 (C).

6. RECORDATION OF SUBDIVISION. Due to the nature of the construction season in Valley County, the Developer shall obtain approval from the City for the Initial Phase final plat within two (2) years of the date of City's final approval of the Project Applications. Developer will apply for approval for final plats for subsequent phases of the subdivision in successive two (2) year intervals; provided that Developer my request extensions thereof as permitted by the Cascade City Code.

7. SUBSEQUENT FILINGS AND APPROVALS. Developer shall submit and City shall consider all subsequent applications for development of the Property in accordance with the approved Project Applications and this Agreement. Nothing contained herein is intended to limit the police powers of City in reviewing any subsequent applications, but in the exercise of City's discretion, City shall act in a manner which is not inconsistent with this Agreement. This Agreement shall not be construed to modify or waive any law, ordinance, rule, or regulation, including without limitation, applicable building codes, fire codes, zoning ordinances, subdivision ordinances, or comprehensive plan provisions, unless expressly provided herein.

8. SALE OR TRANSFER OF THE PROPERTY. This Agreement, which shall be duly recorded in the records of Valley County, Idaho, shall run with the land comprising the Property as provided further herein, and it shall be binding upon and benefit the City, Developer and any successor in interest to any portion of the Property. No person or entity acquiring any portion of the Property shall be permitted to develop, construct, erect, or install any building, utility, improvement or landscaping which does not conform in all respects to this Agreement. In the event that Developer or a successor in interest to Developer, sells or transfers the Property, or

any portion thereof, written notice of said transaction shall be given to City no less than thirty (30) days prior to the closing in connection with such transfer. This requirement shall not apply to the sale and/or transfer of platted lots.

9. <u>AMENDMENT OF AGREEMENT AND CHANGES TO PROJECT APPLICATIONS</u>. This Agreement shall be amended or cancelled, in whole or in part, only by the mutual consent of the parties, executed in writing. Both parties acknowledge that the site plans, building locations, floor plans, elevations and design of the buildings will be refined prior to submission in connection with each phase of the Project and final construction drawings for building permits and other permits. The parties acknowledge and agree that the covenants, conditions and agreements set forth in this Agreement are made based on the information and circumstances pertaining to the Property and the infrastructure needs for the Project known to the parties as of the date of this Agreement. If during the course of development of the Project any material changes to that information and/or circumstances are revealed, the parties agree to discuss and negotiate proposed reasonable and necessary changes to this Agreement in good faith and in accord with appropriate process as required by law.

10. <u>TERM OF AGREEMENT.</u> The Term of this Agreement shall commence on the Effective Date and shall automatically terminate on the 20th anniversary of the Effective Date. Annexation of any additional property shall not extend the Term of this Agreement unless the Agreement is expressly amended to extend the Term.

11. <u>SUPERSEDING PRIOR AGREEMENTS</u>. This Agreement supersedes and extinguishes all prior agreements, if any, between the parties with regard to the Property or any portion thereof.

12. <u>DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION</u>:

12.1 Acts of Default. Either party's failure to faithfully comply with all of the terms and conditions included in this Agreement, or the terms and conditions of any permit issued by the City pursuant to this Agreement, shall constitute default under this Agreement.

12.2 Notice and Cure Period. In the event of a default of this Agreement, the party claiming a default has occurred (the "Claimant") shall serve the defaulting party with a written notice of default. The written Notice of Default shall state the factual and legal reasons for the claim of default, the actions to be taken by the defaulting party to cure the claim of default and a demand that the defaulting party respond in writing, within a reasonable stated time, as to whether or not the defaulting party consents to comply with the Notice of Default or denies the claim of default. The defaulting party shall have a minimum of thirty (30) days to remedy any default. If the default is such that more than thirty (30) days would reasonably be required to cure default, then the defaulting party shall have such additional time as may be necessary to perform or comply so long as the defaulting party commences performance within such thirty (30) day period and diligently proceeds to complete such performance and timely cures any exigent circumstance of the claim of default that affects public health and safety.

12.3 Hearing. In the event the defaulting party fails to correct and remedy a default or noncompliance, within the reasonable time designated in the Notice of Default, to the satisfaction of the Claimant, the Claimant shall then request the City Council to proceed to set a hearing to take action as identified in the Notice of Default and to enforce the terms of this Agreement, which such hearing shall be held on a date at least twenty-eight (28) days after written notice thereof is provided to the parties. At the hearing to show cause, the defaulting party may present evidence as to why it or they are not in default. Following any presentation of evidence by the defaulting party and any rebuttal by the Claimant and any other interested persons, the City Council shall determine the matter and issue an Order of Decision in accordance with the evidence presented at the hearing. The Order of Decision issued by the City Council shall be the final administrative remedy of any claim of default under this Agreement.

12.4 Remedies. Either party may thereafter seek legal action in a court of competent jurisdiction for any legal or equitable remedy, including, without limitation, declaratory relief and or specific performance of this Agreement as the case may be in the Fourth Judicial District Court in Valley County. In the event of default by Developer that is not cured, and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511, Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property.

12.5 Waiver. A waiver by either of any default by the other party of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies of a party nor apply to any subsequent default of any such or other covenants and conditions.

13. <u>RELATIONSHIP OF PARTIES</u>. It is understood the contractual relationship between City and Developer is such that Developer is not the agent, partner, or joint venturer of City.

14. <u>FORCE MAJEURE</u>. If either party hereto is delayed in the performance of any of such party's obligations hereunder because of extreme inclement weather, labor dispute or strike, civil strife, act of God, the time of performance for completion of such amenity or improvement may be extended for the same time as lost by Developer.

15. <u>ATTORNEY FEES AND COSTS</u>. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs incurred with regard to such action including, without limitation, any appeals.

16. <u>NOTICES</u>. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices shall be deemed properly served or delivered, if delivered by hand to the party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid. Notices required to be given to City shall be addressed as follows:

City of Cascade
c/o City Clerk
PO Box 649
Cascade, Idaho 83611

Notices required to be given to Developer shall be addressed as follows:

Cascade River, LLC
c/o Phil Davis
19 Warm Lake Highway
Cascade, Idaho 83611

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

17. NO WAIVER. Any forbearance of any kind that may be granted or allowed by City or Developer to the other under this Agreement shall not in any manner nor in any way be deemed or construed or considered as waiving or surrendering any of the conditions or covenants of this Agreement or any subsequent default.

18. RECORDATION. This Agreement, including subsequent amendments thereto, shall be recorded in the Offices of the Valley County Recorder, Caldwell, Idaho, by Developer and Developer shall pay the costs of recordation.

19. PARTIAL INVALIDITY. In the event any portion of this Agreement or part thereof shall be determined by any Court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or parts thereof, shall remain in full force and effect.

20. ENTIRE AGREEMENT. This Agreement constitutes the full and complete Agreement of and between the parties hereto. No representations or warranties made by either party or such party's officers, employees or agents shall be binding unless contained in this Agreement or subsequent written amendments thereto.

21. NO THIRD PARTY BENEFICIARIES. Nothing contained herein shall be deemed or construed to create any third party beneficiaries or third party rights.

22. RULES OF CONSTRUCTION. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive. The captions to paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

23. EXHIBITS. Attached to this Agreement and made a part of this Agreement by reference are the following Exhibits:

A - Legal Description of Annexation Property
B - Preliminary Plat/PUD Map

24. RECITALS INCORPORATED. The recitals set forth in this Agreement are hereby incorporated herein by reference.

25. AUTHORITY TO EXECUTE. Each of the persons executing this Agreement represent and warrant that such person has the lawful authority and authorization from such person's respective entities to execute this Agreement, as well as all applications, plats and other documents required hereunder for and on behalf of the entity executing this Agreement.

26. ANNEXATION. This Agreement is subject to and shall become effective upon annexation of the Property.

[Signature page follows as separate page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in accordance with the laws of the State of Idaho, effective the date designated.

CITY:

CITY OF CASCADE
an Idaho municipal corporation

By:____________________________
Judith Nissula, Mayor

DEVELOPER:

CASCADE RIVER, LLC
an Idaho limited liability company

By:__________________________________
F. Phillip Davis, its ________________

STATE OF IDAHO)
) ss.
County of Valley)

On this _____ day of _______________, 2020, before me, a Notary Public in and for said State, personally appeared ____________________, known or identified to me to be a _______________________ of Cascade River, LLC, an Idaho limited liability company that executed the within instrument or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

____
NOTARY PUBLIC for IDAHO
Residing at _____________________
Commission expires ______________

STATE OF IDAHO)
) ss.
County of Valley)

On this _____ day of _______________, 2020, before me, a Notary Public in and for said State, personally appeared _____________, Mayor of the City of Cascade, Idaho, known or identified to me to the person whose name is subscribed to the within instrument as the Mayor of the City of Cascade, Idaho, and acknowledged to me that he executed the same as Mayor of the City of Cascade, Idaho.

____
NOTARY PUBLIC for IDAHO
Residing at _____________________
Commission expires ______________

From:	Steve Bradbury
To:	Matthew A. Johnson
Bcc:	fphillipdavis@gmail.com; Yvette Davis (yvetteidavis@gmail.com); Josh Davis (josh@graniteexcavation.com); steve@ateamboise.com
Subject:	RE: River District Public hearing continued to May 11, 2020
Date:	Friday, April 17, 2020 3:23:00 PM
Attachments:	FW River District Wescott letter.msg

Matt

Thank you for the quick reply. The Davis' are hopeful that the issues raised in my e-mail will be appropriately and timely resolved.

As to the development agreement, you have often expressed the desire to avoid arguing about it in the public hearing and I have generally agreed. That , however cannot happen unless you produce a proposal far enough in advance of the hearing to make negotiation and counter-proposals possible. I believe we need staff's proposal at least two weeks before the hearing The earlier the better.

The Davis' are quite interested in having a discussion with Mr. Scoresby and have no objection to the city including its staff. The Davis' would likely want to include their engineer, Dave Sterling as well. Can we schedule that discussion for some time next week? Perhaps you could propose a couple of dates/times when Mr. Scoresby and the staff are available and we can make arrangements on our end.

I understand that posting materials to the city's website is not a normal process, but once the city elected to do so, and invited the public to rely on it to obtain information about the application, the city cannot pick and choose what will be included, especially when that picking and choosing excludes the applicant's communications and submittals. That is quite clearly unfair and needs to be corrected immediately.

As to my concern about your characterization of the applicant's communications with council as ex-parte, you have misunderstood which communication I was referencing. It was Phil Davis' letter to the council delivered via e-mail on March 20, 2019, not my letter dated March 9, 2020 read to and hand delivered to council on that date. Neither communication, however, was ex-parte and to the extent that your advice to the city that either of them were is clearly incorrect and does need to be corrected on the record.

Your advice to the council that Mr. Davis' March 20 letter was ex-parte was made in an e-mail to the mayor and council that same day, which you shared with me. I am attaching a copy for your convenience. Although your e-mail to the council indicated that Mr. Davis' letter would be included in the record, you tainted it by describing it as ex-parte creating the impression that the applicant was and has been engaged in improper/illegal activity, which is clearly not the case. As I have pointed out, delivering for the record written communications to the council on a pending matter is not ex-parte, improper or illegal. Similarly, your characterization that those communications have not been made in the "normal course of proceedings" and "outside of the traditional process" further creates the impression that the applicant has acted inappropriately. There is no legal prohibition of which I am aware against the applicant directing its comments and concerns on a

pending application, in writing and for the record, directly to the council at any point in the hearing process. I am unaware of any legal requirement that such communications be directed to or through city staff for its prior review or vetting or comment or whatever it is you believe city staff needs or has the right to do with those communications before the council may receive them. Nor am I aware of any legal right in the city staff to determine when and how communications and submittals from the applicant are disseminated to the council.

This last point is important because, as you know, except for my letter of January 24, 2020 to the council discussing the differences between applicant's proposed development agreement and the staff's (and which was delivered to council so that it could be considered at the January 27 hearing), the applicant's communications with council outside of the hearings has addressed it's concerns about the process and more specifically, staff's and the mayor's activities and conduct, something the applicant has been expressing concern about for nearly a year. I suggest you re-read Mr. Arnold's e-mail to council of May 12, 2019 (which, by the way is also missing from the city's website in spite of the fact that you said it would be made a part of the record), my letter to council of August 6, 2019, my letter to council of March 9, 2020 and Mr. Davis' letter of March 20, 2020. The applicant has been asking the council to become engaged in the process and exercise some control over staff. The applicant has not been asking the council to deliberate on the merits. These are issues for the council to address, not the staff. Your approach, however, has been to try to isolate council from those issues, protect staff, suggest that the applicant is acting improperly, at the least, if not illegally and discourage the council from addressing or attempting to resolve the applicant's concerns. Perhaps you could reconsider your approach and, instead, clarify to council that these communications are not ex-parte and make it clear to the council that, as you say below, it can consider and try to resolve the applicant's concerns if it wishes.

Finally, I apparently need to reiterate the applicant's position on the timing of the "face to face meeting" and the March 9 work session. The applicant originally proposed the work session so that both the staff and applicant could receive, in a setting other than a public hearing, direction from the council which could inform the further negotiations on the development agreement. You will recall that we spoke in February, I believe, and I told you that having such a meeting before the council work session was premature, that the new fiscal impact study needed to first be prepared, that ITD comments and approval needed to be received, that the engineers needed to work out the floodplain issues, a further proposal be developed on the sewer and water infrastructure needs, and that this information be delivered to the council for its consideration and further direction be received from council. Then, if necessary, a face to face meeting could be held to work out any details. You seemed to agree at the time and a meeting was pre-scheduled for March 12, after the work session, in case it was needed. You, however, blocked the applicant's participation at the work session, which is what actually caused it to fail (and which necessitated my March 9 letter to the council) and convinced the council that the face to face meeting needed to happen first. So, the applicant went to the face to face meeting where we had a lengthy discussion but no agreements or actual progress on the terms of the development agreement. And nothing has changed since. We still do not know what the council, as opposed to staff, expects of the applicant or what council thinks about staff's latest requests for more studies, analysis and information. The result is that all of those issues will have to be dealt with at, rather than prior to, the public hearing – a situation you have said you wanted to avoid.

In any event, Mr. Davis has asked if he and I can have a telephone call with you early next week to further discuss and explain the applicant's concerns about the current situation. I am hopeful that we can eliminate some of the obstacles to progress and finally get to a hearing on the merits. Let me know when you would be available for such a call, assuming you would be willing to schedule one.

Thank you,
Steve

Stephen A. Bradbury
Williams Bradbury P. C.
PO Box 388
Boise, Idaho 83701
Telephone: (208) 344-6633
Direct: (208) 921-7329
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From: Matthew A. Johnson [mailto:mjohnson@WHITEPETERSON.com]
Sent: Wednesday, April 15, 2020 5:26 PM
To: Steve Bradbury
Subject: RE: River District Public hearing continued to May 11, 2020

Steve – Some responses upon a first read of your email:
Item 1: Understood and taken under consideration.

Item 2: I will forward these requests. Personally I find it a reasonable request to arrange for a further meeting that includes Mr. Scoresby if helpful and will recommend such; though I think other City staff need to be involved in that discussion as well to keep everyone on the same page. We had Mr. Scoresby on-call for the face-to-face meeting if needed, so I'm not sure why Applicant didn't request this verification of Trevor's representations then. After we hopefully get a Scoresby meeting arranged, then I think we should discuss further what may or may not be needed with Mr. Scoresby for the hearing when it occurs.

Item 3: I will follow up on this directly with the Clerk and Mayor. I have pushed from the start, even before the coronavirus situation, for the materials to be posted online to ease access for all. This is not part of the City's standard development procedure (due to resource limitations). I do not anticipate any omissions are deliberate, but will double-check on such and press for getting all materials caught up and posted as a priority with a looming hearing date. City staff has been stretched pretty thin due to other circumstances, but hopefully a plan can be made to resolve this sooner than later. Obviously anyone wanting records from the City need only request such (though the online posting saves everyone some hassle.)

Item 4: I honestly don't recall off the top of my head how this discussion occurred or in what context

I may have used the term ex parte – I would have to look back at my notes and perhaps the meeting recording. To the best of my recollection the point I was trying to make to the Council was that the correspondence was being delivered at the meeting, outside of the typical public hearing process, and without any staff review. Quite frankly the way the matter was handled appeared as if the applicant was trying to circumvent both staff and the public hearing process to get the Council to go into deliberations beyond the scope of what was on the agenda. There was a fair amount of concern/confusion about what exactly the workshop was supposed to cover since the face-to-face meeting had not occurred. The City would not generally have allowed some other affected party to stand up during the open comment and provide testimony on a pending application outside the appropriate public hearing process – such an individual would be directed to submit their comment at an appropriate public hearing or in writing to be incorporated into the Record at the public hearing. My use of the term "ex parte" in the moment may have been mistaken. The intent was not to somehow say the Applicant cannot submit any comments or information to the City. All letters and correspondence sent to date are part of the Record. My legal concern is not about the Applicant submitting further information or written correspondence; it is the manner in which such is done – particularly if it creates the possibility of the Council being pulled into deliberations and public hearing style actions outside of a duly noticed public hearing. Written comments submitted to the City by any party are not simply deliberated on at the moment they are received; they are received by the City and incorporated into the Record by the City at the next appropriate public hearing. That being said, I also recognize the letter you are referencing contained concerns directly related to the process – not the merits – and to the extent the Council wanted to address those procedural issues they were able to do so. Frankly your clients' determination not to participate in a face-to-face meeting before that Council workshop appeared to undercut much of the substance of the letter. It was also the decision not to participate in a face-to-face meeting that undermined most of the original intent of what was to even occur at that workshop meeting (as certain councilmembers noted). I am grateful we were able to get that face-to-face meeting then scheduled, luckily just before the coronavirus isolation kicked in and has complicated even holding meetings. At the most recent meeting, the Council did receive a status report from me that the face-to-face meeting had occurred so as to further negotiations on the DA (no discussion of any of the substance/merits of course), such that the Council felt comfortable trying to take the chance to continuing the public hearing to when it did (otherwise I think the continuance would have been to an even later date).

I hope this clarifies the concern I was sharing, perhaps termed inartfully in the moment. The letter is on file and part of the Record, to be formally incorporated into such at the next public hearing, just like any comments received prior to the hearing. If helpful, I am willing to clarify this all to the Council as well at the public hearing (including that I was inaccurate in using the term ex parte) and specifically address the status of that particular letter in the Record. Note that such clarification would include that my concern at the time was a perception that the applicant was pushing for potential deliberation outside the appropriate process.

Matthew A. Johnson
WHITE PETERSON GIGRAY & NICHOLS, P.A.
Canyon Park at the Idaho Center
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From: Steve Bradbury <steve@williamsbradbury.com>
Sent: Wednesday, April 15, 2020 4:31 PM
To: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: RE: River District Public hearing continued to May 11, 2020

Matt

Thanks for the update. I hope the city is able to make the May 11 date hold. Since we now have another month to prepare for the hearing, I think we should use the time productively. Toward that end, I have a few suggestions/requests:

First, we really need you to place a higher priority on, and prepare a proposed development agreement for the applicant's consideration. It needs to be prepared far enough in advance of the hearing date that we can actually have productive discussions/negotiations leading to the hearing. I would really like to avoid a repeat of our January 27 hearing where you produced a city proposal January 21, 6 days before the date of the public hearing, . Although I sent the city a counterproposal January 24, at the hearing, the applicant was chastised for its late submission. While this might not be high on your priority list, it is high on my client's. My client has invested a significant sum of money in this project while it has languished at the city for the past 15 months. Perhaps you should consider this from Mr. Davis' point of view. How do you think you would be reacting if it was your client's project?

Second, I am sure you realize that the city engineer's announcement, made at the March 9, 2020 city council meeting, that the city believes it has less than 100 sewer connections available for this project came as a disappointing surprise to the applicant. That position is a significant departure from the position taken by the city's consultant, Paul Scoresby, in December when he said there were two or three hundred connections available, a position which was not challenged by the city engineer then or later - even at the January 27 hearing. During our March 12 conference, when reminded about Mr. Scoresby's previous statements, the city engineer said only that Mr. Scoresby mis-spoke. As you can certainly understand, the applicant is interested to hear from Mr. Scoresby, especially in view of the fact that the city hired Mr. Scoresby's company, as the recognized expert, to provide advice to the city on its sewer system, since the city engineer's company apparently does not have that expertise. Following the March 12 conference, the applicant asked its engineering consultant, David Sterling, to contact Mr. Scoresby for an explanation. Mr. Sterling was told that Mr. Scoresby had been told not to communicate directly with him. So, the applicant has two requests. One, that the applicant and its engineering consultant be permitted to discuss the issue

with Mr. Scoresby as soon as possible so that it can better understand and react to the city's drastic change of position. If the city wants to participate in that discussion, that is fine. Two, the applicant requests that Mr. Scoresby be asked by the city to attend the May 11 hearing so that his position can be placed on the record and neither the applicant nor the city council will be required to rely on the city engineer to express it for him. Please treat these as formal requests to the city council. If it is necessary for me or the applicant to make these requests directly with the city council, we will, of course do so.

Third, Mr. Davis has had some recent communications with members of the public who have expressed interest in, and asked questions about, the status of the application. Mr. Davis has shared with them information and documents related to the processing of the application and advised them that more information is available on the city's website. Mr. Davis has since been told that almost none of the applicant's communications with the city have been posted to the website. Neither have the applicant's current maps. In a quick review of the materials posted to the website I have found that my letters of August 6, 2019, January 24, 2020 and March 9, 2020, together with their enclosures have not been posted. Also missing is the applicant's March 20 letter to the city council and its enclosure. In addition, Josh Davis has advised me that there were a number of additional public comments submitted before the January 27 hearing that are not posted. Mr. Arnold advises that the maps he submitted on March 20, 2020 have not been posted. And, I still cannot find in the posted record a signed copy of the Planning and Zoning Commission's findings and recommendations on the preliminary plat and planned unit development, an issue I have raised with you several times in the past. While recent events may explain why processing of this application has been stalled for a few weeks, they do not explain why the applicant's submittals have consistently been omitted (the latest post was made on March 23). Instead, one might conclude that the clerk is purposely excluding the applicant's communications which, if true, might lead one to further conclude that the applicant is not being treated fairly in the process due to an underlying bias in city hall. Since city hall is apparently closed and the only source of materials related to the application is the city's website, it seems to me that the city should make an effort to assure that all materials which have been submitted for the record are included. Accordingly, on behalf of the applicant I request that you direct the clerk to immediately post the missing materials, and any others that have been withheld, to the city's website so that interested persons will have the opportunity to review the entirety of the record on this application. Again, If it is necessary for me or the applicant to direct these requests directly with the city council, we will, of course do so.

Finally, I think it appropriate to address your March 20 e-mail to the council characterizing the applicant's March 20 letter to the council as an ex-parte communication. As you may recall, the letter was e-mailed to the city clerk, mayor and council members (and copied to you) and included a very specific request that it and its enclosure be included in the city's record of the application. It was explicitly <u>not</u> ex-parte. At the time the letter was sent, the subject application was (and still is) pending before the council with a continued public hearing scheduled for April 13. By notice published by the city, interested persons were invited to submit written comments to the council. How is the applicant's letter ex-parte? Is the applicant not permitted to send such comments? I wonder, are letters sent to the council by persons other than the applicant also ex-parte? Are Mr. Milleman's letters ex-parte? Are all of the letters previously sent to the council on this application ex-parte? If not, why are the applicant's letters viewed differently? If there is a legal distinction, it

escapes me. I am happy to hear your explanation if you care to provide one. In the meantime, if the applicant believes it needs to communicate with the council in writing and on the record, it will continue to do so.

Thank you in advance for considering these requests and comments. Past experience demonstrates that the May 11 hearing date will arrive more quickly than we might think. We need to hear from you on these matters by the end of the week.

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From: Matthew A. Johnson [mailto:mjohnson@WHITEPETERSON.com]
Sent: Monday, April 13, 2020 8:51 PM
To: Steve Bradbury; Steve Millemann
Subject: River District Public hearing continued to May 11, 2020

Steve and Steve –
The City Council continued the River District applications/DA public hearing to May 11, 2020. Note there was substantial discussion earlier in the meeting about the City's ability to hold a virtual public hearing. Valley County is test-running some hearings in late April; the City will be watching closely how those go. The City is pursuing some technology and additional staffing considerations to see about handling a virtual public hearing. There are still a lot of unknowns and some uncertainty on how things will go (particularly since these particular applications are not necessarily a simple, routine public hearing and substantial public interest/input is anticipated to continue). I'll be working with the City Clerk as to how to best notice the continued hearing under the circumstances and to notice that the participation will be virtual.

As another potential curveball, I think it should be on your radar that if the Governor indicates that restrictions will be relaxed and opened up, such that we may be looking at more normal meetings opening back up in the near future – there will likely be further discussion about whether a virtual public hearing continues to make sense or should be delayed a little longer to be able to handle via more normal means (say for instance if regular meetings may resume in June).

So May 11 is the target and currently scheduled public hearing date for your calendars, but please bear with the City as the matter remains somewhat in flux and I can't really say that anything is completely certain at this point.

Matt

Matthew A. Johnson
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From:	Matthew A. Johnson
To:	Steve Bradbury
Subject:	FW: River District & Wescott letter
Date:	Monday, April 20, 2020 5:31:16 PM

Steve –

I believe the below is the email you are referencing with your concerns about my portrayal of the communication as "ex parte." Having reviewed further, I agree with your stated concern that ex parte was not necessarily the appropriate term to be using. Upon my initial read my focus was on how this communication was sent directly to each councilmember, which such outside communication on an individual councilmember basis would typically be an ex parte contact. What I overlooked in the moment was that the correspondence was sent to all councilmembers at the same time – more analogous to a general public comment though somewhat outside the usual steps for doing so (submission and distribution via the City.)

While submission of such comments directly to the Council (rather than through the City comment and packet process) is somewhat unusual, I agree that it is not necessarily ex parte. The letter by Yvette Davis is part of the record on this matter. Generally I think the remainder of my follow-up email to the Council is accurate, so long as the specific term ex parte is removed. My email was somewhat rushed out of a desire to make sure the Council was reminded not to be deliberating on this matter outside of the appropriate process (since all were cced on the email and a "reply all" would have been problematic).

I hope this helps to clarify. My intent is to clarify this for the Council by providing the same explanation to them with a note that I was in error to use the term "ex parte" in that context and how it may have mistakenly created the perception of the Applicant doing something wrongful. I regret the error and will include my apology to the Applicant.

Please let me know if you have concerns or questions about this course of corrective action.

Matt

Matthew A. Johnson
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From: Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Sent: Friday, March 20, 2020 3:39 PM
To: Steve Bradbury <steve@williamsbradbury.com>
Subject: FW: River District & Wescott letter

Steve – FYI I am sharing the email below which I had to just send to the Mayor and Council in relation to an ex parte communication that was just sent by your client.

Let's plan to have a telephone conversation early next week to touch base on this and the status with the revised development agreement. I am awaiting some internal language input to finish up the revised draft – which I hope to distribute early next week.

Scheduling remains very much up in the air; though for now the public hearing remains continued to the regular Council meeting on April 13.

Matt

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From: Matthew A. Johnson
Sent: Friday, March 20, 2020 3:37 PM
To: mayor@cascadeid.us; clerk@cascadeid.us; councilmemberherrick@cascadeid.us; councilmemberbrown@cascadeid.us; councilmembertangen@cascadeid.us; Rachel Huckaby <councilmemberhuckaby@cascadeid.us>
Subject: RE: River District & Wescott letter

Mayor and Councilmembers – This email is simply with respect to process, not in relation to any substance. Please limit your replies to me or the Mayor individually, so as to avoid potential deliberation/discussion outside the open meetings requirements.

Please be advised these documents are an ex parte communication outside the normal course of

proceedings. This letter and e-mail will be added to the public record on this matter. I am sure staff will be happy to provide comment and response on the substance of the letter at the next public meeting when these applications are addressed (either via a status report or as part of a public hearing.) Unfortunately that schedule is a bit up in the air due to the coronavirus situation.

As an ex parte communication, I strongly recommend you should not engage in discussion or deliberations on these documents among the Council (outside of a public meeting) or with individuals, including the applicant, outside the process. These applications have already been fraught with numerous communications outside of the traditional process, and unfortunately this creates another non-standard communication that will have to be addressed in process and on the record.

Process-wise, I am continuing to work with and advise the Mayor regarding the ongoing coronavirus situation and its impacts on meetings (and especially public hearings). At this point the River District public hearings have been continued to the first regular April meeting (due to cancellation of the March meetings), and all we can do is monitor how the situation continues to develop to see if April 13 is going to work or if another continuance is going to be necessitated by the health situation.

Matt

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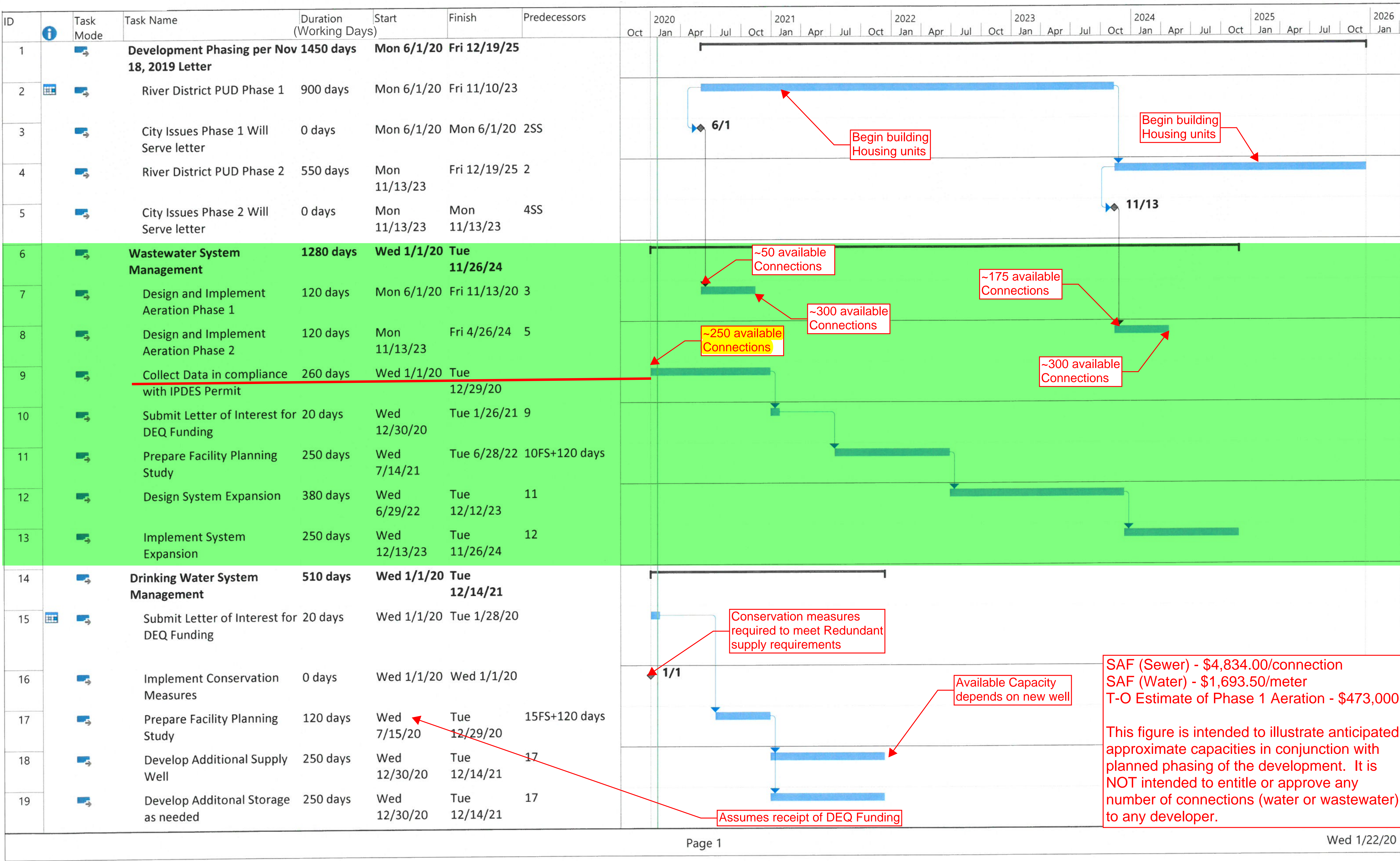
From: Yvette Davis <yvetteidavis@gmail.com>
Sent: Friday, March 20, 2020 3:13 PM
To: mayor@cascadeid.us; clerk@cascadeid.us; councilmemberherrick@cascadeid.us; councilmemberbrown@cascadeid.us; councilmembertangen@cascadeid.us; Rachel Huckaby <councilmemberhuckaby@cascadeid.us>; Matthew A. Johnson <mjohnson@WHITEPETERSON.com>
Subject: River District & Wescott letter

Please read and thank you for your time.

EXHIBIT D

The River District PUD Phasing with Water and Wastewater System Planning



ID	Task Mode	Task Name	Duration (Working Days)	Start	Finish	Predecessors
1		**Development Phasing per Nov 18, 2019 Letter**	**1450 days**	**Mon 6/1/20**	**Fri 12/19/25**	
2		River District PUD Phase 1	900 days	Mon 6/1/20	Fri 11/10/23	
3		City Issues Phase 1 Will Serve letter	0 days	Mon 6/1/20	Mon 6/1/20	2SS
4		River District PUD Phase 2	550 days	Mon 11/13/23	Fri 12/19/25	2
5		City Issues Phase 2 Will Serve letter	0 days	Mon 11/13/23	Mon 11/13/23	4SS
6		**Wastewater System Management**	**1280 days**	**Wed 1/1/20**	**Tue 11/26/24**	
7		Design and Implement Aeration Phase 1	120 days	Mon 6/1/20	Fri 11/13/20	3
8		Design and Implement Aeration Phase 2	120 days	Mon 11/13/23	Fri 4/26/24	5
9		Collect Data in compliance with IPDES Permit	260 days	Wed 1/1/20	Tue 12/29/20	
10		Submit Letter of Interest for DEQ Funding	20 days	Wed 12/30/20	Tue 1/26/21	9
11		Prepare Facility Planning Study	250 days	Wed 7/14/21	Tue 6/28/22	10FS+120 days
12		Design System Expansion	380 days	Wed 6/29/22	Tue 12/12/23	11
13		Implement System Expansion	250 days	Wed 12/13/23	Tue 11/26/24	12
14		**Drinking Water System Management**	**510 days**	**Wed 1/1/20**	**Tue 12/14/21**	
15		Submit Letter of Interest for DEQ Funding	20 days	Wed 1/1/20	Tue 1/28/20	
16		Implement Conservation Measures	0 days	Wed 1/1/20	Wed 1/1/20	
17		Prepare Facility Planning Study	120 days	Wed 7/15/20	Tue 12/29/20	15FS+120 days
18		Develop Additional Supply Well	250 days	Wed 12/30/20	Tue 12/14/21	17
19		Develop Additonal Storage as needed	250 days	Wed 12/30/20	Tue 12/14/21	17