Moscow City Council

Stormwater Workshop
~Agenda~

Laurie M. Hopkins
City Clerk

www.ci.moscow.id.us

208.883.7015

Tuesday, February 18, 2020 | **4:30 PM** | **Council Chambers 206 E. Third St.**

1. **Welcome - Mayor Bill Lambert**
2. **Introduction - Gary J. Riedner, City Supervisor**
3. **Stormwater Presentation – Aspect Consulting**
4. **Additional Staff Comments and Information – Tyler Palmer, Deputy City Supervisor Public Works and Services / Kyle Steele, Environmental Services Manager**
5. **Council Discussion, Comments and Staff Direction**

ADJOURN

NOTICE: Moscow City Council and committee meetings are televised, videotaped and/or recorded. Individuals attending the meeting who require special assistance to accommodate physical, hearing, or other impairments, please contact the City Clerk, at (208) 883-7015 or TDD 883-7019, as soon as possible so that arrangements may be made.

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Authorization To Discharge Under The
National Pollutant Discharge Elimination System (NPDES)

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, Public Law 100-4 (hereafter CWA),

City of Moscow
(hereinafter, "Permittee")

is authorized to discharge from all municipal separate storm sewer system (MS4) outfalls in the Permit Area described in Part 1.1 to Paradise Creek, South Fork Palouse River, and other associated waters of the United States, in accordance with the conditions and requirements set forth herein.

A copy of this Permit must be kept as part of the Permittee's Stormwater Management Program (SWMP) documentation.

This Permit becomes effective **October 1, 2019.**

This Permit and the authorization to discharge expires at midnight, **September 30, 2024.**

The Permittee must reapply for authorization to discharge on or before **April 3, 2024,** (180 days before expiration of this Permit), pursuant to Part 8.2 (*Duty to Reapply*), if the Permittee intends to continue operation and discharges from the MS4 beyond the term of this Permit.

Signed this 5th day of AUGUST, 2019

Daniel D. Opalski, Director for
Water Division

SCHEDULE

1. Stormwater Management Program Document	
Post SWMP Document(s) on at least one publicly accessible website - See Part 2.5.3 and Part 3.1.8	**December 1, 2020**
Update the SWMP Document to describe implementation of relevant requirements for discharges to impaired waters - See Part 4.	**December 1, 2021**
2. Stormwater Management Program Control Measures	
Begin Education & Outreach Activities - See Part 3.1	**October 1, 2020**
Implement all SWMP Control Measures in Part 3.	**April 3, 2024**
***3.* Alternative Control Measure Requests**	
See Part 2.6 and Part 4.	**October 1, 2021**
4. Monitoring/Assessment Plan	
Submit a Monitoring/Assessment Plan *See Part 2.6, and Part 4.*	**October 1, 2021**
Conduct Monitoring/Assessment Activity	**April 3, 2024**
***5.* Pollutant Reduction Activities for Discharges to Impaired Waters**	
Submit description of selected Pollutant Reduction Activities; See Part 2.6, and Part 4.	**October 1, 2021**
Implement least two (2) pollutant reduction activities.	**April 3, 2024**
6. Annual Report	
See Part 6.4, and Table 6.4.1	**December 1 of each year, beginning Calendar Year 2020**
7. **Twenty-Four Hour Notice of Noncompliance.**	
Permittee must report certain noncompliance by phone. *See Part 7.9.*	Within 24 hours from when Permittee becomes aware of circumstances
8. NPDES Permit Renewal Application	
See Part 8.2.	**April 3, 2024**

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ACRONYMS

ACM	Alternative Control Measure
BMP	Best Management Practice
CFR	Code of Federal Regulations
CGP	Construction General Permit, i.e., the most current version of the *NPDES General Permit for Stormwater Discharges from Construction Activities in Idaho*
CWA	Clean Water Act
ERP	Enforcement Response Policy
EPA	United States Environmental Protection Agency, Region 10
FR	Federal Register
GIS	Geographic Information System
IDAPA	Idaho Administrative Procedures Act
IDEQ	Idaho Department of Environmental Quality
µg/L	Micrograms per Liter
mg/L	Milligrams per Liter
MEP	Maximum Extent Practicable
ML	Minimum Levels
MS4	Municipal Separate Storm Sewer System
MSGP	Multi-Sector General Permit, i.e., the most current version of the *NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities in Idaho*
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and Maintenance
pg/L	Picograms per Liter
PCB	Polychlorinated biphenyls
PDF	Portable Document Format
POTW	Publicly Owned Treatment Works
QAPP	Quality Assurance Project Plan
QA/QC	Quality Assurance/Quality Control
SWMP	Stormwater Management Program
SWPPP	Stormwater Pollution Prevention Plan
TMDL	Total Maximum Daily Load
TSS	Total Suspended Solids
US	United States
USC	United States Code
WA	Washington
WD	EPA Region 10 Water Division
WDOE	Washington Department of Ecology

1 APPLICABILITY

1.1 Permit Area

This Permit covers all areas within the corporate boundary of the City of Moscow, Idaho, served by the municipal separate storm sewer system (MS4) owned and/or operated by the City of Moscow (Permittee).

1.2 Discharges Authorized Under this Permit.

During the effective dates of this Permit, the Permittee is authorized to discharge stormwater to waters of the United States from all portions of the MS4 identified in Part 1.1, subject to the conditions set forth herein.

Pursuant to Part 2.4. below, this Permit also conditionally authorizes the discharges from the Permittee's MS4 that are categorized as allowable non-stormwater discharges.

2 LIMITATIONS AND CONDITIONS

2.1 Compliance with Water Quality Standards

If the Permittee complies with all the terms and conditions of this Permit, it is presumed that the Permittee is not causing or contributing to an excursion above the applicable Idaho Water Quality Standards.

If monitoring or other information shows that a pollutant in the Permittee's MS4 discharge is causing or contributing to an excursion above the applicable Idaho Water Quality Standard, the Permittee must comply with the notification and other requirements outlined in Part 5 (*Required Response to Excursions of Idaho Water Quality Standards*), except where a pollutant of concern in the MS4 discharge is subject to the requirements of Part 4 (*Special Conditions for Discharges to Impaired Waters*) or is the result of an illicit discharge and subject to a Permittee response as outlined in Part 3.2.6 (*Follow-up*).

2.2 Snow Disposal to Receiving Waters

The Permittee is not authorized to dispose of snow plowed in the geographic area of permit coverage directly into waters of the United States, or directly into the MS4(s). Discharges from the Permittee's snow disposal and snow management practices are authorized under this Permit only when such practices and disposal sites are conducted, operated, designed, and maintained to reduce pollutants in the discharges pursuant to Part 3.5 (*Pollution Prevention/Good Housekeeping for MS4 Operations*) so as to avoid excursions above the Idaho Water Quality Standards.

2.3 Stormwater Discharges Associated with Industrial or Construction Activity

The Permittee is not authorized to discharge stormwater associated with industrial activity (as defined in 40 CFR §122.26(b)(14)), and/or stormwater associated with construction activity (as defined in 40 CFR §122.26(b)(14)(x) and (b)(15)), unless the discharges are otherwise authorized under the *NPDES General Permit for Stormwater Associated with Construction Activities in Idaho* (Idaho CGP), the *NPDES Multi-Sector General Permit for Stormwater Associated with Industrial Activities in Idaho* (MSGP), or another appropriate NPDES permit.

2.4 Non-Stormwater Discharges

The Permittee is not authorized to discharge non-stormwater from the MS4, except where such discharges satisfy one of the following conditions:

2.4.1 The non-stormwater discharge is in compliance with a separate NPDES permit; or

2.4.2 The discharge originates from emergency firefighting activities; or

2.4.3 The non-stormwater discharge results from a spill, and/or is the result of an unusual and severe weather event where reasonable and prudent measures have been taken to prevent and minimize the impact of such discharge; or

2.4.4 The non-stormwater discharge consists of emergency discharges required to prevent imminent threat to human health or severe property damage, provided that reasonable and prudent measures have been taken to prevent and minimize the impact of such discharges; or

2.4.5 The non-stormwater discharge falls under one of the allowable categories listed in Part 2.4.5.1 2.4.5.1below, and the discharge is not a source of pollution to waters of the United States as defined in Part 2.4.5.2.

2.4.5.1 **Categories of Allowable Non-Stormwater Discharges** include:

2.4.5.1.1 Uncontaminated water line flushing;

2.4.5.1.2 Landscape irrigation (provided all pesticides, herbicides and fertilizer have been applied in accordance with manufacturer's instructions);

2.4.5.1.3 Diverted stream flows;

2.4.5.1.4 Uncontaminated ground water infiltration (as defined at 40 CFR § 35.2005(20)) to separate storm sewers;

2.4.5.1.5 Rising ground waters;

2.4.5.1.6 Uncontaminated pumped ground water;

2.4.5.1.7 Discharges from potable water sources;

2.4.5.1.8 Foundation drains and footing drains (where flows are not contaminated with process materials such as solvents);

2.4.5.1.9 Uncontaminated air conditioning or compressor condensate;

2.4.5.1.10 Irrigation water;

2.4.5.1.11 Springs;

2.4.5.1.12 Water from crawlspace pumps;

2.4.5.1.13 Lawn watering;

2.4.5.1.14 Individual residential car washing;

2.4.5.1.15 Flows from riparian habitats and wetlands;

2.4.5.1.16 Dechlorinated swimming pool discharges;

2.4.5.1.17 Routine external building washdown which does not use detergents;

2.4.5.1.18 Street and pavement washwaters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed); and

2.4.5.1.19 Fire hydrant flushing.

2.4.5.2 **Sources of Pollution to Waters of the United States**

A discharge is considered a source of pollution to waters of the United States if it contains:

2.4.5.2.1 Hazardous materials in concentrations found to be of public health significance or to impair beneficial uses in receiving waters. ("*Hazardous materials*" is defined in IDAPA 58.01.02.010.47 and Part 9 of this Permit); and/or

2.4.5.2.2 Toxic substances in concentrations that impair designated beneficial uses in receiving waters. ("*Toxic substanc*es" is defined at IDAPA 58.01.02.010.102 and Part 9 of this Permit); and/or

2.4.5.2.3 Deleterious materials in concentrations that impair designated beneficial uses in receiving waters. (*"Deleterious materials*" is defined at IDAPA 58.01.02.010.21 and Part 9 of this Permit); and/or

2.4.5.2.4 Radioactive materials or radioactivity at levels exceeding the values listed in 10 CFR § 20 in receiving waters; and/or

2.4.5.2.5 Floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or in concentrations that may impair designated beneficial uses in receiving waters; and/or

2.4.5.2.6 Excessive nutrients that can cause visible slime growths or other nuisance aquatic growths that impair designated beneficial uses in receiving waters; and/or

2.4.5.2.7 Oxygen-demanding materials in concentrations that would result in anaerobic water conditions in receiving waters; and/or

2.4.5.2.8 Sediment above quantities specified in IDAPA 58.01.02.250.02.e or in the absence of specific sediment criteria, above quantities that impair beneficial uses in receiving waters; and/or

2.4.5.2.9 Material in concentrations that exceed applicable natural background conditions in receiving waters (IDAPA 58.01.02.200. 09). Temperature levels may be increased above natural background conditions when allowed under IDAPA 58.01.02.401.

2.5 Permittee Responsibilities

2.5.1 **Shared Implementation with Outside Entities.**

The Permittee may share or delegate implementation of one or more of the stormwater management control measures required by this Permit to another entity. The Permittee may rely on another entity if:

2.5.1.1 The other entity, in fact, implements the stormwater management control measure, or component thereof;

2.5.1.2 The particular stormwater management control measure, or component thereof, is at least as stringent as the corresponding Permit requirement; and

2.5.1.3 The other entity agrees to implement the stormwater management control measure, or component thereof, on the Permittee's behalf.

The Permittee and the outside entity must maintain a written and binding agreement between the parties. The written agreement must describe each organization's respective roles and responsibilities related to this Permit and identify all aspects of stormwater management where the entities will share or delegate implementation responsibility. Any previously signed agreement may be updated, as necessary, to comply with this requirement. Any such agreement must be described in the Permittee's SWMP Document required by Part 2.5.3, and a copy of the agreement between parties must be available to the EPA and/or IDEQ upon request. The Permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the SWMP control measure (or component thereof).

2.5.2 **Maintain Adequate Legal Authority**

The Permittee must maintain relevant ordinances and/or regulatory mechanisms to control pollutant discharges into and from its MS4 and to comply with this Permit.

In the SWMP Document required by Part 2.5.3, the Permittee must summarize all of its legal authorities that address the six criteria listed below.

If existing ordinances and/or regulatory mechanisms are insufficient to meet the criteria, the Permittee must adopt new regulatory mechanisms.

No later than **April 3, 2024,** and to the extent allowable pursuant to authority granted the Permittee under applicable Idaho law, the Permittee must develop and/or update (as needed) relevant ordinance or other regulatory mechanisms to:

2.5.2.1 Prohibit and eliminate, through statute, ordinance, policy, permit, contract, court or administrative order, or other similar means, illicit discharges to the MS4;

2.5.2.2 Control, through statute, ordinance, policy, permit, contract, court or administrative order, or other similar means, the discharge to the MS4 of spills, dumping or disposal of materials other than stormwater, pursuant to Part 3.2.3 (*Illicit Discharge Detection and Elimination –ordinance*);

2.5.2.3 Control the discharge of stormwater and pollutants from land disturbance and development, both during the construction phase and after site stabilization has been achieved, consistent with Parts 3.3 (*Construction Site Runoff Control*

Program) and 3.4 (*Stormwater Management for Areas of New Development and Redevelopment*);

2.5.2.4 Control through interagency agreements as necessary or appropriate, the contribution of pollutants from one MS4 to another interconnected MS4;

2.5.2.5 Require compliance with conditions in ordinances, permits, contracts, or orders; and

2.5.2.6 Carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance and noncompliance with these Permit conditions, including the prohibition of illicit discharges to the MS4.

2.5.3 **SWMP Document.**

The Permittee must maintain a written SWMP document, or documents, that describe in detail how the Permittee will comply with the required stormwater management (or SWMP) control measures in this Permit. As necessary the SWMP Document must be updated and must describe the Permittee's interim schedule(s) for implementation of any SWMP control measure components to be developed during the term of this Permit. The SWMP Document may be organized according to the outline provided in Appendix B.

No later than **December 1, 2020,** the Permittee's SWMP Document must be completed and made available through the website required in Part 3.1.8 (*Publicly Accessible Website*).

No later than **December 1, 2021**, the Permittee must update the SWMP Document to describe their intended implementation of relevant requirements specified in Part 4 including any associated interim implementation date(s). See Part 4 (*Special Conditions for Discharges to Impaired Waters*).

The Permittee must submit to the EPA and IDEQ an updated SWMP Document with the Permit Renewal Application. See Part 8.2.1.

2.5.4 **SWMP Information and Statistics**

The Permittee must maintain a method of gathering, tracking, and using SWMP information to set priorities and assess Permit compliance. The Permittee must track activities and document program outcomes to illustrate progress on the respective SWMP control measure (e.g., the number of inspections, official enforcement actions, and/or types of public education actions, etc.), and cite relevant information and statistics, reflecting the specific reporting period, in each Annual Report.

2.5.5 **SWMP Resources**

The Permittee must provide adequate finances, staff, equipment and other support capabilities to implement the control measures and other requirements outlined in this Permit.

2.5.6 **Transfer of Ownership, Operational Authority, or Responsibility for SWMP Implementation.**

The Permittee must implement the required SWMP control measures of this Permit in all new areas added or transferred to the Permittee's MS4 (or for which a Permittee becomes responsible for implementation of SWMP control measures) as expeditiously as practicable, but not later than one (1) year from addition of the new areas. The Permittee must notify the

EPA and IDEQ in the next Annual Report of any additions or changes, and schedules for implementation in new areas, and must update their SWMP Document accordingly.

2.5.7 **Best Management Practice (BMP) Selection**
When selecting BMPs to implement the required SWMP control measures of this Permit, the Permittee must consider and, if practicable, utilize practices identified in the most recent version of the Idaho Department of Environmental Quality's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties (*http://www.deq.idaho.gov/water-quality/wastewater/stormwater/).

2.6 Alternative Control Measure Requests

2.6.1 **General Requirement**
The Permittee may request that the EPA and IDEQ consider any alternative documents, plans, or programs that the Permittee believes to be equivalent to a required SWMP control measure, or control measure component, specified in Part 3 or Part 4 of this Permit.

Alternative documents, plans, or programs must be submitted pursuant to Part 2.6.3 (*Content of ACM Request)* for EPA and IDEQ review and consideration no later than **October 1, 2021.**

2.6.2 **Actions to Address Discharges to Impaired Waters**
For the purposes of this Permit, an Alternative Control Measure (ACM) also includes the Permittee's specific actions to address discharges to impaired waters as specified in Part 4 (*Special Conditions for Discharges to Impaired Waters*).

The Permittee must submit at least one Monitoring/Assessment Plan to assess pollutant discharges from the MS4 into Paradise Creek and South Fork Palouse River as required by Part 4.2. The Permittee must submit a written description of at least two (2) Pollutant Reduction Activities to address expectations in the applicable Total Maximum Daily Load (TMDL) analyses identified in Part 4.3. These documents must be submitted pursuant to 2.6.3 for EPA review and consideration no later than **October 1, 2021.**

2.6.3 **Content of Alternative Control Measure Request**
In support of its ACM Request, the Permittee must submit a complete copy of the relevant alternative document, plan, or program, and include:

2.6.3.1 A detailed written discussion identifying the original required minimum SWMP control measure, or control measure component, that is addressed by the Permittee's submittal, and the reasons, rationale, citations, and/or references sufficient to demonstrate that the alternative document, plan, or program meets

or exceeds the requirements of the original SWMP control measure, or control measure component, it is meant to replace;

2.6.3.2 A detailed schedule the Permittee intends to follow to enact the ACM in its jurisdiction prior to the expiration date of this Permit; and

2.6.3.3 A description of any local public notice or public engagement process, including relevant results of such public engagement, that the Permittee conducted regarding the ACM prior to submittal.

2.6.4 **Recognition of Alternative Control Measures**

Upon receipt of a Permittee's ACM Request and in consultation with IDEQ, the EPA will assess if the document, plan**,** or program meets the requirements of this Permit to be deemed equivalent to the SWMP control measure or control measure component.

If the EPA determines that the document, plan**,** or program meets the requirements of this Permit, the EPA will modify this Permit to reference the ACM. When new, specific permit terms or conditions are warranted, the EPA will notify the Permittee and the public of its intent to add such terms or conditions to this Permit. The EPA will accept public comment for a minimum of 30 days on additional permit terms or conditions pursuant to 40 CFR §§ 122.62 and 124.

As specified in Part 8.1 (*Permit Actions*), a Permittee's ACM Request does not stay any permit condition and does not replace the required SWMP control measure or control measure component until the EPA completes a permit revision procedure as outlined above. Upon completion of a permit revision, the EPA will notify the Permittee, in writing, of its final decision to authorize the Permittee's ACM.

3 STORMWATER MANAGEMENT PROGRAM (SWMP) CONTROL MEASURES

3.1 Public Education and Outreach on Stormwater Impacts

The Permittee must conduct, or contract with other entities to conduct, an ongoing public education, outreach, and involvement program based on stormwater issues of significance in the Permittee's jurisdictions. When applicable, the Permittee must comply with State and local public notice requirements when conducting public involvement activities.

3.1.1 Compliance Dates

No later than **October 1, 2020,** the Permittee must begin implementation of the required SWMP control measure components described in Parts 3.1.2 through 3.1.8 below.

No later than **April 3, 2024,** the Permittee must fully implement all required components described in Parts 3.1.2 through 3.1.8 below.

3.1.1.1 If the Permittee seeks to comply with any SWMP control measure component, or combination of components, in this Part using one or more ACMs, the Permittee must submit a request in accordance with Part 2.6 (*Alternative Control Measure Requests*) no later than **October 1, 2021.**

3.1.2 Conduct a Public Education, Outreach and Involvement Program

The Permittee's public education and outreach program must include coordination and educational efforts targeting at least one of the four audiences listed in Part 3.1.4 below. The goal of the education and outreach program is to reduce the behaviors and practices that cause or contribute to adverse stormwater impacts on receiving waters by increasing audience understanding of actions they can take to prevent pollutants in stormwater runoff entering the MS4 and into local receiving waters.

The public involvement program must inform and engage interested stakeholders in the Permittee's development and implementation of the SWMP control measures, to the extent allowable pursuant to authority granted the individual Permittee under Idaho law.

To be considered adequate, the Permittee's implementation of the public education, outreach and involvement program must include the activities in Parts 3.1.3 through 3.1.8 below.

3.1.3 Stormwater Education Activities

The Permittee must distribute and/or offer at least eight (8) educational messages or activities over the permit term to the selected audience(s) identified in Part 3.1.4 below.

Educational messages or activities may include printed materials such as brochures or newsletters; electronic materials such as websites; mass media such as newspaper articles or public service announcements; targeted workshops or other educational events; or other viable format. The Permittee may use existing materials if the materials convey the message the Permittee chooses to deliver. The Permittee may develop its own educational materials and means of delivering its message(s). Based on the target audience's

demographic, the Permittee must consider delivering its selected messages and/or activities in an appropriate manner in language(s) other than English.

3.1.4 **Target Audience(s) and Topics**

The Permittee must, at a minimum, select at least one audience and focus its efforts on conveying relevant messages using one or more of the topics listed below for the selected target audience. Topics listed are not exclusive, and the Permittee may focus its efforts on one or more audience(s) and topics most relevant to the community.

If the Permittee does not have legal authority over private property (i.e., a college, university, highway district, state department of transportation, school district, drainage district, and/or other public entity), the term "target audience" is clarified to mean any employees, consultants, students, clients, or members of the public for whom the Permittee provides its services.

3.1.4.1 General Public (including homeowners, homeowner's associations, landscapers, and property managers)

- General impacts of stormwater flow into surface water, and appropriate actions to prevent adverse impacts;
- Impacts from impervious surfaces and appropriate techniques to avoid adverse impacts;
- Yard care techniques protective of water quality, such as composting;
- BMPs for proper use, application and storage of pesticides, herbicides, and fertilizers;
- Litter and trash control and recycling programs;
- BMPs for power washing, carpet cleaning and auto repair and maintenance;
- Low Impact Development/green infrastructure techniques, including site design, pervious paving, retention of mature trees/vegetation, landscaping and vegetative buffers;
- Appropriate maintenance of landscape features providing water quality benefits;
- Source control BMPs and environmental stewardship;
- Impacts of illicit discharges and how to report them;
- Actions and opportunities for pet waste control/disposal,
- Water wise landscaping, water conservation, water efficiency.

3.1.4.2 Business/Industrial/Commercial/Institutions (including home based and mobile businesses)

- General impacts of stormwater flow into surface water, and appropriate actions to prevent adverse impacts;
- Impacts from impervious surfaces and appropriate techniques to avoid adverse impacts;
- BMPs for use and storage of automotive chemicals, hazardous cleaning supplies, vehicle wash soaps and other hazardous materials;
- BMPs for power washing, carpet cleaning and auto repair and maintenance;

- BMPs for proper use, application and storage of pesticides, herbicides, and fertilizers;
- Low Impact Development/green infrastructure techniques, including site design, pervious paving, retention of mature trees/vegetation, landscaping and vegetative buffers;
- Appropriate maintenance of landscape features providing water quality benefits;
- Impacts of illicit discharges and how to report them;
- Litter and trash control and recycling programs
- Water wise landscaping, water conservation, water efficiency.

3.1.4.3 Construction/Development (e.g., Engineers, Contractors, Developers, Landscape Architects, Site Design Professionals)

- General impacts of stormwater flow into surface water, and appropriate actions to prevent adverse impacts;
- Impacts from impervious surfaces and appropriate techniques to avoid adverse impacts;
- Stormwater treatment and volume control practices;
- Technical standards for stormwater site plans; including appropriate selection, installation, and use of required construction site control measures
- Low Impact Development/green infrastructure techniques, including site design, pervious paving, retention of mature trees/vegetation, landscaping and vegetative buffers;
- Appropriate maintenance of landscape features providing water quality benefits;
- Water wise landscaping, water conservation, water efficiency.

3.1.4.4 Elected Officials, Land Use Policy and Planning Staff

- General impacts of stormwater flow into surface water, and appropriate actions to prevent adverse impacts;
- Impacts from impervious surfaces and appropriate techniques to avoid adverse impacts;
- Low Impact Development/green infrastructure techniques, including site design, pervious paving, retention of mature trees/vegetation, landscaping and vegetative buffers.

3.1.5 **Assessment**

The Permittee must begin to assess, or participate in one or more efforts to assess, the understanding of the relevant messages and adoption of appropriate behaviors by their target audience(s). The resulting assessments must be used to direct future stormwater education and outreach resources most effectively. Information summarizing the Permittee's incremental assessment of any specific education, outreach and/or public involvement activities conducted over the relevant reporting period must be included in each Annual Report.

3.1.6 **Tracking**
The Permittee must track and maintain records of their public education, outreach and involvement activities and include descriptive summary of their activities in the corresponding Annual Report.

3.1.7 **Education on SWMP Control Measures**
For each SWMP control measure listed below, the Permittee must provide educational opportunities and materials for appropriate audiences in their jurisdiction.

3.1.7.1 **Outreach/Training on Construction Site Control Measures:** At least twice during the Permit term, the Permittee must provide educational materials for construction operators working in their jurisdiction pertaining to the Permittee's requirements for appropriate selection, design, installation, use, and maintenance of required construction site controls imposed by the Permittee as described in Part 3.3.3.

3.1.7.2 **Outreach/Training on Permanent Stormwater Controls:** At least twice during the Permit term, the Permittee must provide opportunity and/or conduct training sufficient to educate and ensure that engineers, site designers, and/or other locally appropriate audiences working in their jurisdiction are aware and informed of appropriate selection, design, installation, use, and maintenance of permanent stormwater controls imposed by the Permittee as described in Part 3.4.3.

3.1.8 **Publicly Accessible Website**
The Permittee must maintain and promote at least one publicly-accessible website with information on the Permittee's SWMP implementation, points of contact, and educational materials for audience(s) listed in Part 3.1.4. The website must be updated at least annually prior to the submittal of Annual Reports to the EPA, and/or as new material is available. The Permittee's website must incorporate the following minimum features:

3.1.8.1 **Phone numbers, and/or other direction** to assist the public to report illicit discharges, illicit connections, and illegal dumping activity;
3.1.8.2 **Reports, plans, strategies, or documents** generated by the Permittee in compliance with this Permit, in draft form when the Permittee is soliciting input from the public, and in final form when the document is completed;
3.1.8.3 **Information regarding ordinances, policies and/or guidance** documents related to the Permittee's requirements for construction and permanent stormwater management control, including education opportunities, training, licensing, and/or permitting process for the Permittee's jurisdiction; and
3.1.8.4 **Permittee contact information**, including phone numbers for relevant staff, mailing addresses, and electronic mail addresses.

3.2 Illicit Discharge Detection and Elimination

The Permittee must implement and enforce a program to detect and eliminate illicit discharges into the MS4, to the extent allowable pursuant to authority granted the individual Permittee under Idaho law.

An illicit discharge is any discharge to an MS4 that is not composed entirely of stormwater. Any exceptions are conditional as identified in Part 2.4 (*Non-stormwater Discharges*).

3.2.1 **Compliance Dates**

No later than **April 3, 2024,** the Permittee must revise and update their existing illicit discharge management program as necessary to include the required components described in Parts 3.2.2 through 3.2.9 below.

3.2.1.1 If the Permittee seeks to comply with any SWMP control measure components, or combination of components, in this Part using one or more ACMs, the Permittee must submit a request in accordance with Part 2.6 (*Alternative Control Measure Requests*) no later than **October 1, 2021.**

3.2.2 **MS4 Map and Outfall Inventory**

The Permittee must update, or develop if not already completed, a map of their MS4 and all associated outfall locations under its operational control within the Permit Area.

The Permittee must maintain an outfall and interconnection inventory to accompany the MS4 map(s). The purpose of the inventory is to identify each outfall and interconnection discharging from the Permittee's MS4; record its location (by latitude and longitude) and overall physical condition; and provide a framework for the Permittee to track its outfall inspections, dry weather discharge screenings, maintenance, and other activities required by this Permit.

The Permittee may integrate these efforts into any existing asset management program, provided the Permittee explains its management approach in the SWMP Document required by Part 2.5.3.

No later than **April 3, 2024,** an electronic GIS version of the MS4 map, and the accompanying Outfall Inventory, must be submitted to the EPA and IDEQ as part of the Permit Renewal Application required by Part 8.2. Prior to this date, all available GIS data layers must be shared with the EPA and/or IDEQ upon request.

To be considered adequate, the MS4 Map and Outfall Inventory must depict and/or contain the following information:

3.2.2.1 Location of all inlets, catch basins, and outfalls owned/operated by the Permittee, including a unique identifier for each outfall, spatial location (latitude

and longitude, with a minimum accuracy of +/-30 feet), and general information regarding dimensions, shape, material (concrete, polyvinyl chloride, etc.);

3.2.2.2 Location of all MS4 collection system pipes, open channel conveyances, (laterals, mains, etc.) owned/operated by the Permittee, including locations where the MS4 is physically interconnected to the MS4 of another operator;

3.2.2.3 Location of structural flood control devices, if different from the characteristics listed above;

3.2.2.4 Names and locations of waters of the U.S. that receive discharges from the inventoried MS4 outfalls, including an indication of all use impairments as identified by IDEQ in the most recent Integrated Report;

3.2.2.5 Location of all existing permanent stormwater controls which are part of the MS4 owned and/or operated by the Permittee, including structural or treatment controls (e.g., detention and retention basins, infiltration systems, bioretention areas, swales, oil/water separators and/or other proprietary systems);

3.2.2.6 Location and characteristics of any MS4 outfalls with ongoing dry weather flows identified by the Permittee as being caused by irrigation return flows and/or groundwater seepage; and

3.2.2.7 Location of Permittee-owned vehicle maintenance facilities, material storage facilities, heavy equipment storage areas, maintenance yards, and snow disposal sites; Permittee-owned or operated parking lots and roads in areas served by the MS4.

3.2.3 **Ordinance and/or other regulatory mechanisms**

The Permittee must prohibit non-stormwater discharges into the MS4 (except those conditionally allowed by Part 2.4) through enforcement of an ordinance or other regulatory mechanism to the extent allowable under Idaho state law. The Permittee must implement appropriate enforcement procedures and actions, including a written policy of enforcement escalation procedures for recalcitrant or repeat offenders, to ensure compliance.

To be considered adequate, the ordinance or regulatory mechanism must:

3.2.3.1 Authorize the Permittee to control and respond to the discharge of spills into the MS4 to the extent allowable pursuant to authority granted the individual Permittee under Idaho law;

3.2.3.2 Authorize the Permittee to prohibit illicit connections, and the dumping or disposal of materials other than stormwater, into the MS4; and

3.2.3.3 Authorize the Permittee to prohibit, and eliminate, at a minimum, the following discharges to the MS4 to the extent allowable pursuant to authority granted the individual Permittee under Idaho law:

- Sewage;

- Discharges of wash water resulting from the hosing or cleaning of gas stations, auto repair garages, or other types of automotive services facilities;
- Discharges resulting from the cleaning, repair, or maintenance of any type of equipment, machinery, or facility, including motor vehicles, cement-related equipment, and port-a-potty servicing, etc.;
- Discharges of wash water from mobile operations, such as mobile automobile or truck washing, steam cleaning, power washing, and carpet cleaning, etc.;
- Discharges of wash water from the cleaning or hosing of impervious surfaces in municipal, industrial, commercial, and residential areas - including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc., where detergents are used and spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- Discharges of runoff from material storage areas containing chemicals, fuels, grease, oil, or other hazardous materials;
- Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; discharges of pool or fountain filter backwash water;
- Discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes; and
- Discharges of food-related wastes (grease, fish processing, and restaurant kitchen mat and trash bin wash water, etc.).

3.2.4 **Illicit Discharge Complaint Report and Response Program**
At a minimum, the Permittee must respond in the following manner to reports of illicit discharges from the public:

3.2.4.1 **Receipt of Complaints or Reports from the Public**: The Permittee must maintain a dedicated telephone number, email address, and/or other publicly available and accessible means (in addition to the website required in Part 3.1.8) for the public to report illicit discharges. This complaint/reporting function must be answered by trained staff during normal business hours. During non-business hours, a system must be in place to record incoming calls or reports, and to guarantee timely response by the Permittee. The Permittee's means of receiving complaints/reports from the public must be printed and/or advertised through the appropriate education, training, and public participation materials produced under Part 3.1 (*Public Education, Outreach and Involvement*).

3.2.4.2 **Response to Complaints or Reports from the Public**: The Permittee must respond to and investigate all complaints or reports of illicit discharges as soon as possible, but no later than within two (2) working days.

3.2.4.3 **Tracking of Complaints or Reports and Actions Taken:** The Permittee must maintain a log or other means of documenting all complaints or reports of illicit discharges into the MS4, and the response or action taken by the Permittee to address the complaint or report. Such program information must be

summarized for the relevant reporting period and included in each Annual Report.

3.2.5 **Dry Weather Outfall Screening Program**

The Permittee must conduct a dry weather analytical and field screening monitoring program to identify non-stormwater flows from MS4 outfalls during dry weather. This program must emphasize screening activities to detect and identify illicit discharges and illegal connections, and to reinvestigate potentially problematic MS4 outfalls throughout the Permit Area defined in Part 1.1. At a minimum, this program must include the following SWMP control measure components:

3.2.5.1 **Outfall Identification and Screening Protocols**: The Permittee must use reconnaissance activities, information recorded through the complaint reporting program, and (if available) existing watershed assessment or Total Maximum Daily Load (TMDL) analyses, to prioritize and target outfalls for screening throughout their Permit Area defined in Part 1.1.

The Permittee must develop a written plan that outlines how chemical and microbiological field screening analysis will be conducted on the dry weather flows identified during the reconnaissance and screening efforts, including field screening methodologies and associated trigger thresholds used by the Permittee for determining follow-up action(s).

3.2.5.2 **Number of Outfalls to be Screened**: The Permittee must conduct visual dry weather screening of their MS4 outfalls, emphasizing those outfalls or portions of the MS4 that have not yet been inventoried or screened during the previous permit term.

Photos may be used to document and record the physical conditions associated with selected MS4 outfalls. If the individual MS4 outfall is dry (no flows or ponded runoff), the Permittee must also document and record such observations.

If the total number of MS4 outfalls in the Permit Area defined in Part 1.1 is less than 50, the Permittee must screen all outfalls at least annually.

If the total number of MS4 outfalls in the Permit Area defined in Part 1.1 is more than 50, the Permittee must screen a minimum of 50 outfalls annually.

3.2.5.3 **Monitoring of Illicit Discharges**: Where dry weather flows from the MS4 are identified by the Permittee, the Permittee must identify the source of such flows, and take appropriate action to eliminate the flows to the extent allowable pursuant to authority granted the Permittee under Idaho law. At a minimum, the Permittee must conduct sampling of dry weather flows via grab samples of the discharge for in-field analysis and identification and may elect to use the following as indicator constituents: pH; total chlorine; detergents as surfactants; total phenols; *E. coli*; total phosphorus; turbidity; temperature; and suspended solids concentrations. Results of any field sampling must be compared to established trigger threshold levels and/or existing state water quality standards to direct appropriate follow-up actions by the Permittee in

accordance with existing protocols and the ordinance/regulatory mechanism established by the Permittee.

3.2.5.4 **Maintain Records of Dry Weather Outfall Screening Program**: In each Annual Report, the Permittee must include a general summary of the results of dry weather screening program activities conducted over the preceding reporting period.

The Permittee must keep detailed records of its dry weather screening program activities conducted throughout the permit term, including the following information for each location:

- Time since last rain event; estimated quantity of last rain event;
- Site description (e.g., conveyance type, adjacent land uses); flow estimation (e.g., width of water surface, approximate depth of water, approximate flow velocity, flow rate);
- Visual observations (e.g., odor, color, clarity, floatables, deposits/stains, vegetation condition, structural condition, and biology);
- Results and documentation of any in-field sampling; recommendations for follow-up actions to address identified problems to the extent allowable pursuant to authority granted the individual Permittee under Idaho law; and/or completed follow-up actions taken by the Permittee.

3.2.6 **Follow-up**

Within thirty (30) days of its detection, the Permittee must investigate recurring illicit discharges identified as a result of complaints or identified as a result of the dry weather screening investigations and sampling, to determine the source of such discharge.

The Permittee must take appropriate action to address and eliminate the source of an ongoing illicit discharge within sixty (60) days of its detection, to the extent allowable to the Permittee under Idaho law.

3.2.6.1 For each MS4 outfall where the ongoing dry weather discharge is identified by the Permittee as being associated with irrigation return flows and/or groundwater seepage, "*appropriate action*" means, at a minimum, the Permittee must document in the next Annual Report the MS4 outfall location, and the facts supporting the Permittee's determination that the source is from either irrigation return flows or groundwater seepage. See also Permit Part 3.2.2.6.

3.2.6.2 As part of the Permit Renewal Application required by Part 8.2, the Permittee must include the complete list of all Permittee-identified MS4 outfall locations with ongoing dry weather flows associated with irrigation return flows and/or groundwater seepage.

3.2.7 **Prevention and Response to Spills to the MS4**

The Permittee must maintain written spill response procedures, and must coordinate their own spill prevention, containment, and response activities with the appropriate departments, programs, and agencies in the Permit Area to prevent spill related discharges

from the MS4 to waters of the U.S. The Permittee must respond to, contain, and clean up any spill of sewage and other material that may discharge into the MS4 from any source (including private laterals and/or failing septic systems) in the Permit Area to the extent allowable pursuant to authority granted the individual Permittee under Idaho law.

3.2.7.1 The Permittee must immediately report all spills of hazardous material, deleterious material, or petroleum products which may impact waters (ground and surface) of the State, as directed in Part 7.9 (*Twenty-Four Hour Notice of Noncompliance Reporting*) and Appendix A.2 (*Reporting of Discharges Containing Hazardous Materials or Deleterious Material*).

3.2.8 **Proper Disposal of Used Oil and Toxic Materials**

The Permittee must coordinate with appropriate local entities to educate the Permittee's employees and members of the public of the proper management, disposal, or recycling of used oil, vehicle fluids, toxic materials, and other household hazardous wastes in the Permittee's jurisdiction.

3.2.9 **Illicit Discharge Detection and Elimination Training for Staff**

The Permittee must ensure that all persons responsible for investigating, identifying and eliminating illicit discharges and illicit connections into the MS4 are appropriately trained to conduct such activities. At a minimum, the Permittee's construction inspectors, maintenance field staff, and code compliance officers must be sufficiently trained to conduct dry weather screening activities and to respond to reports of illicit discharges and spills into the MS4.

The Permittee must provide orientation and training for new staff working on illicit discharge detection and elimination issues in the first six (6) months of employment.

If the Permittee utilizes outside parties to perform illicit discharge detection and elimination actions, outside staff must be appropriately trained to conduct such activities.

This training may be coordinated/combined with other Permittee staff education and training requirements in Parts 3.3.7 (*Construction Runoff Control Training for Staff)*, 3.4.7 (*Permanent Stormwater Control Training for Staff)*; and 3.5.10 (*Stormwater Pollution Prevention/Good Housekeeping Training for Staff*).

3.3 Construction Site Stormwater Runoff Control

3.3.1 **Compliance Dates**

No later than **April 3, 2024,** the Permittee must update its existing construction site stormwater runoff control requirements to enact SWMP control measure components in Parts 3.3.2 through 3.3.7 below.

3.3.1.1 If the Permittee seeks to comply with any SWMP control measure component, or combination of components, in this Part using one or more ACMs, the Permittee must submit a request in accordance with Part 2.6 (*Alternative Control Measure Requests*) no later than **October 1, 2021.**

3.3.2 **Ordinance and/or other regulatory mechanism.**

Through ordinance or other regulatory mechanism to the extent allowable under Idaho state law, the Permittee must require erosion controls, sediment controls, and waste materials management controls to be used and maintained at construction projects from initial clearing through final stabilization.

To be considered adequate, the Permittee's regulatory mechanism must require construction site operators to maintain effective controls to reduce pollutants in stormwater discharges to the MS4 from sites in the Permittee's jurisdiction, as described in Part 3.3.3. The Permittee must require construction site operators to submit construction site plans for projects disturbing one or more acres for Permittee review, as described in Part 3.3.4. The Permittee must use inspections and enforcement actions (for example, written warnings, stop work orders and/or fines) to ensure compliance, as described in Part 3.3.5 below, and must maintain a written enforcement response policy, as described in Part 3.3.6.

3.3.2.1 **Compliance with Other NPDES Permit Requirements:** For construction projects in the Permittee's jurisdiction that disturb one or more acres (including projects that disturb less than one acre but are part of a common plan of development or sale that disturb one or more acres), the Permittee must refer project site operators to obtain NPDES permit coverage under the current version of the Idaho CGP. See also Part 2.3 (*Stormwater Discharges Associated with Industrial or Construction Activity*).

3.3.3 **Construction Site Runoff Control Specifications**

The Permittee must require construction site operators to use erosion, sediment, and waste material management controls at construction project sites that result in land disturbance of greater than or equal to one (1) acre, including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more. The Permittee may define appropriate controls for different types and/or sizes of construction activity occurring in their jurisdiction.

The Permittee must maintain written specifications that address the proper installation and maintenance of such controls during all phases of construction activity occurring in their jurisdiction. The Permittee may adopt specifications created by another entity which complies with this Part. Construction site runoff control specifications must consist of:

3.3.3.1 Requirements for use of erosion control, sediment control, and waste materials management/pollution prevention practices that complement, and do not conflict with, the current version of the Idaho CGP;

3.3.3.2 Sizing criteria, performance criteria, illustrations, and design examples, as well as recommended operation and maintenance of each practice and guidance on selection and location of construction site runoff control practices; and

3.3.3.3 Specifications for long term operation and maintenance of such construction site runoff control practices to ensure that the control practices continue to perform as designed, including appropriate inspection interval and self-inspection checklists for use by the responsible party/construction site operator.

3.3.4 **Preconstruction Site Plan Review**

At a minimum, the Permittee must review preconstruction site plans from construction project site activity that will result in land disturbance of one (1) or more acres, including construction project site activity less than one acre that is part of a larger common plan of development or sale that would disturb one acre or more, using a checklist or similar process to determine compliance with the ordinance or other regulatory mechanism required by Part 3.3.2.

The Permittee must use individuals knowledgeable in the technical understanding of erosion, sediment, and waste material management controls to conduct such preconstruction site plan reviews.

Site plan review procedures must include consideration of the site's potential water quality impacts and must demonstrate compliance with the ordinance or other regulatory mechanism required by Part 3.3.2.

The Permittee must ensure that any preconstruction site plan contains site-specific measures that meet the Permittee's runoff control specifications as outlined in Part 3.3.3 above and includes any permanent stormwater management controls as outlined in Part 3.4.3 (*Permanent Stormwater Control Specifications*).

3.3.5 **Construction Site Inspection and Enforcement**

At a minimum, the Permittee must inspect construction sites in their jurisdiction that disturb one (1) or more acres, including construction project site activity less than one (1) acre that is part of a larger common plan of development or sale that disturbs one (1) or more acres, to ensure compliance with the Permittee's applicable requirements identified in this Part.

The Permittee must establish an inspection prioritization system to identify the minimum frequency and type of inspections, using such factors as project type, total area of disturbance, location, and potential threat to water quality. The Permittee must describe its construction site inspection prioritization system in the SWMP Document required by Part 2.5.3. In each Annual Report, the Permittee must summarize the nature and number of site inspections, follow-up actions, and any subsequent enforcement actions conducted during the relevant reporting period.

The Permittee must implement procedures for receipt and consideration of information submitted by the public.

Based on the findings of individual site inspections, the Permittee must take follow-up actions (i.e., re-inspection, enforcement) to ensure compliance with its applicable requirements.

Construction site inspections conducted by the Permittee, or its designated representative, must include, but not be limited to:

3.3.5.1 A review of the site plan to determine if the intended control measures were installed, implemented, and maintained;

3.3.5.2 An assessment of the site's compliance with the Permittee's ordinances/requirements, including the implementation and maintenance of required control measures;

3.3.5.3 Visual observation of any existing or potential non-stormwater discharges, illicit connections, and/or discharge of pollutants from the site, and recommendations to the site operator for follow-up if needed;

3.3.5.4 Education or instruction to the construction site operator related to additional stormwater pollution prevention practices, if needed; and

3.3.5.5 A written or electronic inspection report.

3.3.6 **Enforcement Response Policy for Construction Site Runoff Control**

The Permittee must develop, implement and maintain a written escalating enforcement response policy (ERP) or plan appropriate to its organization. The Permittee must submit the ERP for construction site runoff control to EPA and IDEQ with the Permit Renewal Application no later than **April 3, 2024.**

3.3.6.1 The ERP must address enforcement of construction site runoff controls for all construction projects in their jurisdiction, to the extent allowable under Idaho State law.

3.3.6.2 The ERP must describe the Permittee's potential response to violations with appropriate educational or enforcement responses. The ERP must address repeat violations through progressively stricter responses, as needed, to achieve compliance. The ERP must describe how the Permittee will use their available techniques to ensure compliance, such as: verbal warnings; written notices; escalated enforcement measures such as stop work orders, monetary penalties; and/or other escalating measures to the extent allowable under Idaho State law.

3.3.7 **Construction Runoff Control Training for Staff**

The Permittee must ensure that all persons responsible for preconstruction site plan review, site inspections, and enforcement of the Permittee's requirements are trained or otherwise

qualified to conduct such activities.

The Permittee must provide training for new staff working on construction runoff control issues in the first six (6) months of employment.

If the Permittee utilizes outside parties to review plans and/or conduct inspections, outside staff must be trained or otherwise qualified to conduct such activities.

This training may be coordinated/combined with other Permittee staff education and training requirements in Parts 3.2.9 (*Illicit Discharge Detection and Elimination Training for Staff*)'; 3.4.7 (*Permanent Stormwater Control Training for Staff)*; and 3.5.10 (*Stormwater Pollution Prevention/Good Housekeeping Training for Staff*).

3.4 Post-Construction Stormwater Management for New Development and Redevelopment

3.4.1 **Compliance Dates**

No later than **April 3, 2024,** the Permittee must update their existing controls to impose the required SWMP control measure components in Parts 3.4.2 through 3.4.7 below.

3.4.1.1 If the Permittee seeks to comply with any SWMP control measure component, or combination of components, in this Part using one or more ACMs, the Permittee must submit a request in accordance with Part 2.6 (*Alternative Control Measure Requests*) no later than **October 1, 2021.**

3.4.2 **Ordinance and/or other regulatory mechanism**

Through an ordinance and/or regulatory mechanism, to the extent allowable under Idaho state law, the Permittee must require the installation and long-term maintenance of permanent stormwater controls at new development and redevelopment project sites in its jurisdiction that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more) and that discharge into the MS4.

Required permanent stormwater controls must be sufficient to retain onsite the runoff volume produced from a 24-hour, 95th percentile storm event; or sufficient to provide the level of pollutant removal greater than pollutant removal expected by using onsite retention of runoff volume produced from a 24-hour, 95th percentile storm event.

3.4.2.1 **Treatment equivalent to the onsite stormwater design standard**: Using a continuous simulation hydrologic model or other comparable evaluation tool, the Permittee may establish stormwater treatment requirements which attain an equal or greater level of water quality benefits as onsite retention of stormwater discharges from new development and redevelopment sites. Such equivalent expressions of the onsite retention of the 95th percentile storm volume must be submitted to the EPA as an ACM Request pursuant to Part 2.6.

3.4.2.2 **Alternatives for Local Compliance.** The Permittee's ordinance and/or regulatory mechanism may allow alternatives for project operators to comply with the Permittee's onsite retention requirement at a particular site based on factors of technical infeasibility, and/or site constraints. Such feasibility or constraint factors may include but are not limited to: shallow bedrock; high groundwater; groundwater contamination; soil instability as documented by a thorough geotechnical analysis; site/engineering-based conditions such as soils that do not allow for infiltration of the required volume of storm water runoff; and/or a land use that is inconsistent with capture, reuse and/or infiltration of stormwater.

3.4.2.3 **Plan Review and Approval:** The ordinance or other regulatory mechanism must include procedures for the Permittee's review and approval of permanent stormwater control plans for new development and redevelopment projects,

consistent with Parts 3.3.4 (*Preconstruction Site Plan Review and Approval*) and 3.4.4 (*Permanent Controls Plan Review and Approval*).

3.4.3 **Permanent Stormwater Controls Specifications**

The Permittee must specify permanent stormwater controls for project sites in their jurisdiction to install for sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more) and that discharge into the MS4. The Permittee may define appropriate controls for different types and/or sizes of site development activity occurring in their jurisdiction.

The Permittee must develop, or update as necessary, any written specifications to address proper design, installation, and maintenance of required permanent stormwater controls. A Permittee may adopt specifications created by another entity that complies with this Part.

The written specifications must include:

3.4.3.1 **Specifications** for the use of site-based practices suitable to local soils and hydrologic conditions;

3.4.3.2 **Acceptable control practices**, including sizing criteria, performance criteria, illustrations, design examples, and guidance on selection and location of practices; and

3.4.3.3 **Specifications for proper long-term operation and maintenance**, including appropriate inspection interval and self-inspection checklists for responsible parties.

3.4.4 **Permanent Stormwater Controls Plan Review and Approval**

At a minimum, the Permittee must review and approve preconstruction plans for permanent stormwater controls at new development and redevelopment sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more) and that discharge into the MS4. The Permittee must review plans for consistency with the ordinance/regulatory mechanism and specifications required by this Part. The Permittee must not approve or recommend for approval any plans for permanent controls that do not meet minimum requirements specified in their written specifications.

The Permittee must use individuals knowledgeable in the technical understanding of permanent stormwater controls to conduct such plan reviews.

3.4.5 **Permanent Stormwater Controls Inspection and Enforcement**

The Permittee must inspect high priority permanent stormwater controls at new development and redevelopment sites that result in land disturbance of greater than or equal to one (1) acre (including construction project sites less than one acre that are part of a larger common plan of development or sale that would disturb one acre or more) and that discharge into the MS4. The purpose of such inspections is to ensure proper installation,

and long-term operation and maintenance, of such controls.

The Permittee must establish an inspection prioritization system to identify sites for inspections of permanent control installation and operation. Factors to consider when establishing priority regarding where, and when, inspections occur must include, but are not limited to: size of new development or redevelopment drainage area; potential to discharge to portions of the MS4 discharging to impaired waters; sensitivity, and/or impairment status of receiving water(s); and history of non-compliance at the site during the construction phase.

3.4.5.1 **Inspect High Priority Locations**: At a minimum, the Permittee must identify permanent stormwater controls at new development and redevelopment sites that result from land disturbance of at least one (1) or more acres as "high priority", and schedule associated inspections to occur at least once annually. The inspections must determine whether permanent stormwater management or treatment practices have been properly installed (i.e., an "as built" verification). At appropriate intervals determined by the Permittee and established in compliance with Part 3.4.6 below, scheduled inspections must evaluate the ongoing operation and maintenance of such practices, identify deficiencies, and identify potential solutions to reduce negative water quality impacts to receiving waters. The Permittee must use inspection checklists and maintain records of actions taken in response to inspections of permanent stormwater controls at high priority new development and redevelopment sites.

3.4.5.2 **Enforce Requirements:** The Permittee must develop and implement an enforcement response policy similar to that required in Part 3.3.6 (*Enforcement Response Policy for Construction Site Runoff Control*) sufficient to ensure and maintain the functional integrity of permanent stormwater controls in their jurisdiction. The Permittee must submit the ERP for permanent stormwater controls to the EPA and IDEQ with the Permit Renewal Application no later than **April 3, 2024.**

3.4.6 **Operation and Maintenance (O&M) of Permanent Stormwater Controls**

The Permittee must maintain a database inventory to track and manage the operational condition of permanent stormwater controls in its jurisdiction. All available data on existing permanent controls known to the Permittee must be included in the database inventory. At a minimum, the Permittee must begin tracking at the time the Permittee takes ownership, using a database that incorporates geographic information system (GIS) information and/or developed in conjunction with the MS4 Map required in Part 3.2.2 (*MS4 Map and Outfall Inventory*). The tracking system must also include reference to the type and number of permanent stormwater controls; O&M requirements; activity and schedule; responsible party; and any applicable self-inspection schedule.

3.4.6.1 **O&M Agreements**: Where parties other than the Permittee are responsible for the O&M of permanent stormwater controls, the Permittee should require a legally enforceable and transferable O&M agreement with the responsible

party, or other mechanism, that assigns permanent responsibility for maintenance of such permanent stormwater control practices.

3.4.7 **Permanent Stormwater Controls Training For Staff**

The Permittee must ensure that all persons responsible for reviewing site plans for permanent stormwater controls, and/or for inspecting the installation and operation of permanent stormwater controls, are trained or otherwise qualified to conduct such activities.

The Permittee must provide training for new staff working on permanent stormwater control issues in the first six (6) months of employment.

If the Permittee utilizes outside parties to review plans and/or conduct inspections, outside staff must be trained or otherwise qualified to conduct such activities.

This training may be coordinated/combined with other Permittee staff education and training requirements in Parts 3.2.9 (*Illicit Discharge Detection and Elimination Training for Staff*)'; 3.3.7 (*Construction Runoff Control Training for Staff)*; and 3.5.10 (*Stormwater Pollution Prevention/Good Housekeeping Training for Staff*).

3.5 Pollution Prevention/Good Housekeeping for MS4 Operations

The Permittee must properly operate and maintain the MS4 and its facilities, using prudent pollution prevention and good housekeeping as required by this Part, to reduce the discharge of pollutants through the MS4.

3.5.1 Compliance Dates

No later than **April 3, 2024,** the Permittee must ensure that their stormwater infrastructure and management program includes the required SWMP control measure components described in Parts 3.5.2 through 3.5.10 below.

3.5.1.1 If the Permittee seeks to comply with any SWMP control measure component, or combination of components, in this Part using one or more ACMs, the Permittee must submit a request in accordance with Part 2.6 (*Alternative Control Measure Requests*) no later than **October 1, 2021.**

3.5.2 Inspection and Cleaning of Catch Basins and Inlets

The Permittee must inspect all Permittee-owned or operated catch basins and inlets in the MS4 at least once every five years and take all appropriate maintenance or cleaning action based on those inspections to ensure the catch basins and inlets continue to function as designed.

The Permittee may establish a catch basin inspection prioritization system, and establish alternate inspection frequency, provided the Permittee describes all relevant factors used to target such inspections to specific areas of the MS4 in the SWMP Document required by Part 2.5.3. Material removed from MS4 catch basins and inlets must be managed in accordance with Part 7.13 (*Removed Substances*). Records reflecting catch basin and inlet inspection, and material removal/cleaning, must be maintained by the Permittee, and the actions taken during the latest reporting period must be summarized in each Annual Report.

3.5.3 Operation and Maintenance Procedures for Streets, Roads, Highways and Parking Lots

Where the Permittee is responsible for the O&M of streets, roads, highways, and/or parking lots, the Permittee must ensure those procedures are conducted in a manner to protect water quality and reduce the discharge of pollutants through the MS4.

3.5.3.1 At a minimum, O&M procedures must include: practices to reduce road and parking lot debris/pollutants from entering the MS4; practices related to road deicing, anti-icing, and snow removal; operation of snow disposal areas; storage areas for street/road traction material (e.g. salt, sand, or other chemicals); and the long-term O&M of permanent stormwater control measures associated with the Permittee's streets, roads, highways, and parking lots.

3.5.3.2 For each type of maintenance activity, practice, or facility, the Permittee must specific schedules for inspection and maintenance, and appropriate pollution prevention/good housekeeping actions.

3.5.3.3 Where site conditions allow, the Permittee must consider and utilize water conservation measures for all landscaped areas as part of these updated O&M

procedures to prevent landscape irrigation water from discharging through the MS4.

3.5.4 **Inventory and Management of Street/Road Maintenance Materials**

Where the Permittee is responsible for the O&M of streets, roads, highways, and/or parking lots, the Permittee must reduce pollutants in discharges to the MS4 and waters of the U.S. from street/road maintenance material storage stockpiles (such as sand, salt, and/or sand with salt stockpiles).

The Permittee must maintain an inventory of street /road maintenance materials stored at locations within the Permit Area that drain to the MS4. The Permittee must assess the physical adequacy of each Material Storage Location to prevent potential adverse water quality impacts and must make any structural or nonstructural improvements as necessary to eliminate any such impacts.

No later than **April 3, 2024,** the Permittee must include in the SWMP Document a complete description of all Material Storage Locations in the Permit Area that drain to the MS4. The description of each Material Storage Location must, at a minimum, include a narrative of the individual location, an estimated average annual quantity of materials stored at the location; a short description of how/where the Permittee typically uses the material(s) in its jurisdiction; and a summary description of any structural or non-structural controls used by the Permittee to prevent pollutants at material storage locations from discharging to the MS4 and to waters of the U.S.

3.5.5 **Street, Road, Highway, and Parking Lot Sweeping**

Where the Permittee is responsible for the O&M of streets, roads, highways, and/or parking lots, the Permittee must sweep those areas that discharge to the MS4 at least once annually.

No later than **April 3, 2024**, the Permittee must include in the SWMP Document a written description of its sweeping management plan. The sweeping management plan must include:

3.5.5.1 An inventory and/or map of all streets, roads, highways and public parking lots owned, operated, or maintained by the Permittee in the Permit Area that discharge to the MS4 or directly to waters of the U.S., and identify their selected sweeping frequency;

3.5.5.2 A discussion of any areas where sweeping is technically infeasible; for such areas, the Permittee must document the reasons why sweeping in the particular area of their jurisdiction served by the MS4 is infeasible, and describe any alternative means the Permittee uses to minimize pollutant discharges from these areas into the MS4 and into any adjacent waters of the U.S;

3.5.5.3 An overall description of their street sweeping activities to minimize pollutant discharges into the MS4 and receiving water; including the types of sweepers used, number of swept curb and/or lane miles; general schedule or dates of sweeping by location and frequency category; volume or weight of materials

removed; and any public outreach efforts or other means to address areas that are infeasible to sweep.

3.5.6 **O&M Procedures for Other Municipal Areas and Activities**

The Permittee must conduct its municipal O&M activities in a manner that reduces the discharge of pollutants through the MS4 to protect water quality. The Permittee must review, and update as necessary, existing procedures for inspection and maintenance schedules to ensure pollution prevention and good housekeeping practices are conducted for the following activities:

- grounds/park and open space maintenance;
- fleet maintenance and vehicle washing operations;
- building maintenance;
- snow management and snow disposal site O&M;
- solid waste transfer activities;
- municipal golf course maintenance;
- materials storage;
- heavy equipment storage areas;
- hazardous materials storage;
- used oil recycling; and
- spill control and prevention measures for municipal refueling facilities.

3.5.7 **Requirements for Pesticide, Herbicide, and Fertilizer Applications**

The Permittee must implement practices to reduce the discharge of pollutants to the MS4 associated with the Permittee's application and storage of pesticides, herbicides and fertilizers in the Permit Area. At a minimum, such areas include the Permittee's public rights-of-way, parks, recreational facilities, golf courses, and/or landscaped areas. All employees or contractors of the Permittee applying pesticides must follow all label requirements, including those regarding application methods, rates, number of applications allowed, and disposal of the pesticide/herbicide/fertilizer and rinsate.

3.5.8 **Stormwater Pollution Prevention Plans (SWPPPs) for Permittee Facilities**

The Permittee must develop and implement site-specific SWPPPs to manage stormwater discharges from all Permittee-owned material storage facilities, heavy equipment storage areas, and maintenance yards identified in the inventory required by Part 3.2.2 (*MS4 Map and Outfall Inventory*). Permittee-owned facilities discharging stormwater associated with industrial activity, as defined in 40 CFR §122.26(b)(14), must obtain separate NPDES permit coverage pursuant to Part 1.3.3 (*Stormwater Discharges Associated with Industrial or Construction Activity*).

3.5.9 **Litter Control**

Throughout the Permit term, the Permittee must implement methods to reduce litter in its jurisdiction. The Permittee must work cooperatively with others to control litter on a regular basis, and after major public events, in order to reduce the discharge of pollutants to the MS4.

3.5.10 **Stormwater Pollution Prevention/Good Housekeeping Training for Staff**

The Permittee must ensure that all persons responsible for the stormwater infrastructure

management and O&M activities as required by this Part are trained or otherwise qualified to conduct such activities.

The Permittee must provide training for new staff working on infrastructure management and O&M activities as required by this Part in the first six (6) months of employment.

If the Permittee utilizes outside parties to perform infrastructure management and O&M activities as required by this Part, outside staff must be trained or otherwise qualified to conduct such activities.

This training may be coordinated/combined with other Permittee staff education and training requirements in Parts 3.2.9 (*Illicit Discharge Detection and Elimination Training for Staff*)'; 3.3.7 (*Construction Runoff Control Training for Staff)*; and 3.4.7 (*Permanent Stormwater Control Training for Staff*).

4 SPECIAL CONDITIONS FOR DISCHARGES TO IMPAIRED WATERS

4.1 General Requirements

The Permittee must conduct quantitative monitoring/assessment and pollutant reduction activities designed to assess and control impairment pollutants in their MS4 discharges to Paradise Creek and the South Fork Palouse River.

4.1.1 Submit Documents

No later than **October 1, 2021**, and pursuant to Part 2.6 (*Alternative Control Measure Requests*) the Permittee must submit the Monitoring/Assessment Plan and the description of Pollutant Reduction Activities specified in Parts 4.2 and 4.3 below.

The EPA will review the materials submitted and, as necessary, propose to modify this Permit to incorporate by reference the specific monitoring/assessment and pollutant reduction activities. See Part 2.6.4 (*Recognition of ACMs*).

4.1.2 SWMP Document

No later than **December 1, 2021**, the Permittee must update their SWMP Document required in Part 2.5.3 to describe their intended means of accomplishing these requirements, including any associated implementation date(s).

4.1.3 Reporting Requirements

Upon the EPA's written notification pursuant to Part 2.6.4 (*Recognition of ACMs*) the Permittee must thereafter document in each Annual Report their progress on conducting the specified monitoring/assessment and pollutant reduction activities. See also Part 6.4 (*Reporting Requirements*).

No later than **April 3, 2024,** the Permittee must submit final reports summarizing the Monitoring/Assessment information and Pollutant Reduction Activities conducted to date. Such final reports must be submitted with its Permit Renewal Application required by Part 8.2 (*Duty to Reapply*).

4.2 Monitoring/Assessment Activities

The Permittee must submit a Monitoring/Assessment Plan that is designed to quantify, at a minimum, pollutant loadings from the MS4 into Paradise Creek for the *E.coli* as listed in Table 4.2 below. The Monitoring/Assessment Plan must address all required plan elements outlined in Part 6.2 *(General Requirements for Monitoring/Assessment Activities*).

Table 4.2: Minimum Monitoring/Assessment Expectations

Location(s)	Pollutant Parameter
City of Moscow MS4 Discharges into Paradise Creek	*E. coli*

4.3 Pollutant Reduction Activities

The Permittee must define and implement at least one (1) activity designed to reduce *E. coli,* nutrients, sediment, and heat loadings from the MS4 into the Paradise Creek.

The Permittee must define and implement at least one (1) activity designed to reduce nutrients, sediment, and heat loadings from the MS4 into the South Fork Palouse River.

When choosing pollutant reduction activities, the Permittee must also consider that other pollutants, such as polychlorinated biphenyls (PCBs) and fecal coliform, are causing impairments to those receiving waters downstream of the ID/WA border. The Permittee must prioritize the implementation of the selected activities in MS4 areas/locations based on consideration of relevant and available information such as: the EPA-approved TMDLs (See Table 4.3); previously collected monitoring data for *E.coli*, nutrients, sediment/siltation; and/or temperature; cleanup activities at sites with PCBs identified as a contaminant; and/or available relevant local inspection or compliance records.

In the final report required by Part 4.1.3 above, the Permittee must quantify the estimated pollutant reduction accomplished resulting from such activities.

Table 4.3 Receiving Water Impairments

Waterbody/Assessment Unit/Description	***Impairment Pollutants***
Paradise Creek *ID17060108CL005_02* *Paradise Creek - Urban boundary to Idaho/Washington border*	*E. coli; Nutrient/Eutrophication Biological Indicators; Sedimentation/Siltation; Temperature*
Paradise Creek (WA portion): *Paradise Creek 10443; 10439; 10444*	*Fecal coliform bacteria*
South Fork Palouse River ID17060108CL002_03 *S. Fork Palouse River - Gnat Cr. to Idaho/Washington border*	*Nutrient/Eutrophication Biological Indicators; Sedimentation/Siltation; Temperature*
S. Fork Palouse River (WA portion): *SF Palouse River 6712; 6711; 6710; 6707*	*Fecal coliform bacteria; Chlorinated pesticides; Polychlorinated Biphenyls*

5 REQUIRED RESPONSE TO EXCURSIONS ABOVE IDAHO WATER QUALITY STANDARDS

The Permittee will be presumed to be in compliance with applicable Idaho Water Quality Standards if the Permittee is in compliance with the terms and conditions of this Permit. If the Permittee, the EPA, and/or IDEQ determines that the discharge from the MS4 causes or contributes to an excursion above the Idaho Water Quality Standards, then the Permittee remains in compliance with this Permit as long as the Permittee implements all applicable SWMP control measures required by this Permit and undertakes the following actions:

5.1 Notification

The Permittee must notify the EPA and IDEQ in writing at the addresses listed in Appendix A.1 within 30 days of becoming aware that, based on credible site-specific information, a discharge from the Permittee's MS4 is causing or contributing to a known or likely excursion above the Idaho Water Quality Standards.

Written notification under this Part must, at a minimum, identify the source of the site-specific information; describe the location, nature, and extent of the known or likely water quality standard excursion in the receiving water; and explain the reasons why the MS4 discharge is believed to be causing or contributing to the problem. For on-going or continuing excursions, a single written notification provided to both the EPA and IDEQ will fulfill this requirement.

Nothing in this Part precludes any notification required by Part 7.9 (*24-hour Notice of Non-Compliance Reporting)*, the institution of any legal action, or relieves the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state/Tribal law or regulation under authority preserved by Section 510 of the CWA. No condition of the Permit releases the Permittee from any responsibility or requirements under other environmental statutes or regulations.

5.1.1 EPA Response

Based on a notification provided under this Part or through any other means, the EPA may notify the Permittee, in writing, that an adaptive management response is required if the EPA and IDEQ determine that a discharge from the Permittee's MS4 is causing or contributing to an excursion above the Idaho Water Quality Standards in a receiving water.

5.1.1.1 The EPA and IDEQ may elect not to require an adaptive management response from the Permittee if the EPA and IDEQ determine that the excursion of Idaho Water Quality Standards is already being addressed by a TMDL implementation plan or other enforceable water quality cleanup plan; or if the EPA and IDEQ conclude the Permittee's contribution to the excursion will be eliminated through implementation of other permit requirements, regulatory requirements, or Permittee actions.

5.2 Adaptive Management Report

Within 60 days of receiving a response from the EPA and IDEQ under Part 5.1.1, or by an alternative date established by the EPA, the Permittee must review its Stormwater Management Program and submit a report to the EPA and IDEQ. The Adaptive Management Report must include:

5.2.1 **Existing BMPs**

A description of the operational and/or structural BMPs that are currently being implemented at the location to prevent or reduce any pollutants that are causing or contributing to the violation of water quality standards, including a qualitative assessment of the effectiveness of each BMP.

5.2.2 **Potential BMPs**

A description of potential additional operational and/or structural BMPs that will or may be implemented in order to prevent or reduce any pollutants that are causing or contributing to the violation of water quality standards.

5.2.3 **Monitoring/Assessment**

A description of the potential monitoring or other assessment and evaluation efforts that will or may be implemented to monitor, assess, or evaluate the effectiveness of the additional BMPs.

5.2.4 **Schedule**

A schedule for implementing the additional BMPs including, as appropriate: funding, training, purchasing, construction, monitoring, and other assessment and evaluation components of implementation.

5.3 Review and Approval of Adaptive Management Report

The EPA and IDEQ will, in writing, acknowledge receipt of the Adaptive Management Response Report within a reasonable time and will notify the Permittee when it expects to complete its review of the report. The EPA, in consultation with IDEQ, will either approve the additional BMPs and implementation schedule, or require the Permittee to modify the report as needed. If modifications to the Adaptive Management Report are required, the EPA and IDEQ will specify a time frame in which the Permittee must submit the revised Report for the EPA and IDEQ review.

5.4 Implementation

The Permittee must begin implementation of any additional BMPs pursuant to the schedule approved by the EPA and IDEQ immediately upon receipt of the EPA's written notification of approval.

5.5 Reporting

The Permittee must include with each subsequent Annual Report a summary of the status of implementation and the results of any monitoring, assessment, or evaluation efforts conducted during the reporting period to assess progress towards addressing the original water quality excursion. A final summary of such adaptive management efforts must be included with the Permit Renewal Application required by Part 8.2.

5.6 Permit Revision

The EPA will determine, based on the Adaptive Management Report, whether additional permit terms and conditions specific to the Permittee must be added to this Permit. If new or specific permit conditions are warranted, the EPA will notify the Permittee and the public of its intent to propose additional requirements affecting the Permittee and will accept public comment for a minimum of 30 days on any proposed revisions, pursuant to 40 CFR §§ 122.62 and 124.

6 MONITORING, RECORDKEEEPING, AND REPORTING REQUIREMENTS

6.1 Compliance Evaluation

At least once per year, the Permittee must evaluate their compliance with the requirements of this Permit. This self-evaluation includes assessment of progress toward implementing the SWMP control measures in Part 3, and implementation of individual or collective actions to comply with any additional requirements identified pursuant to Part 4 (*Special Conditions For Discharges To Impaired Waters).* The Permittee may document this self-evaluation using the optional Annual Report format provided in Appendix B.

6.2 General Requirements for Monitoring/Assessment Activities

The Permittee must conduct any monitoring and/or assessment actions described in Part 4 consistent with this Part.

6.2.1 **Optional Cooperative Monitoring/Assessment**

The Permittee may cooperate or contract with others to conduct any of the required monitoring/assessment activities specified herein.

If the Permittee chooses to participate in cooperative monitoring/assessment efforts, the Permittee must notify the EPA and IDEQ of the intended arrangement in the Alternative Control Measure Request required by Part 2.6.2 (*Actions to Address Discharges to Impaired Waters*) and submit a joint Monitoring/Assessment Plan as specified in Part 6.2.2 below.

6.2.2 **Monitoring/Assessment Plan and Objectives**

No later than **October 1, 2021**, the Permittee must develop and submit a Monitoring/Assessment Plan designed to address the monitoring/assessment activity specified in Part 4.2 and the quality assurance (QA) objectives defined in Part 6.2.7 below. Any existing Monitoring/Assessment Plan(s) may be modified to comply with this Part. The Permittee must submit the complete Monitoring/Assessment Plan as an ACM Request. See Part 2.6.2 (*Actions to Address Discharges to Impaired Waters*).

6.2.2.1 The EPA will review the Permittee's ACM Request and, as necessary, propose to revise this Permit to incorporate by reference the Permittee's specific monitoring/assessment and pollutant reduction activities.

The Permittee must begin implementation of their identified monitoring/assessment activities no later than 30 days following the EPA's written notice that the Permit has been revised to incorporate their activities, pursuant to Part 2.6.4 (*Recognition of Alternative Control Measures*).

6.2.3 **Representative Sampling**

Samples, measurements and/or assessments conducted in compliance with this Permit must be representative of the nature of the monitored discharge or activity.

6.2.4 **Additional Monitoring**
If the Permittee quantitatively monitors and/or assesses pollutants in their MS4 discharges more frequently, or in more locations, than specified in the Monitoring/Assessment Plan named in this Permit, the results of any additional monitoring must be included with other data submitted to the EPA and IDEQ as required in Part 6.4.3 (*Monitoring/Assessment Report*).

6.2.5 **Wet Weather Discharge Monitoring**
If the Permittee monitors wet weather discharges from MS4 outfalls:

6.2.5.1 **Location -** the locations of such monitoring must be identified in the Monitoring/Assessment Plan required by Part 4 (*Special Conditions for Discharges to Impaired Waters*).

6.2.5.2 **Sample Type**. The sample collection must be identified in the Monitoring/Assessment Plan required by Part 4 (*Special Conditions for Discharges to Impaired Waters*).)

6.2.5.3 **Parameters**. The pollutants to be sampled must be identified in the Monitoring/Assessment Plan required by Part 4 (*Special Conditions for Discharges to Impaired Waters*).)

6.2.5.4 **Frequency**. The samples must be collected at a frequency identified in the Monitoring/Assessment Plan required by Part 4 (*Special Conditions for Discharges to Impaired Waters*). At least one sample each calendar year must be collected in the September - October period.

6.2.5.5 **QA Requirements.** The Permittee must develop a Quality Assurance Project Plan (QAPP), or revise an existing QAPP, as required by Part 6.2.6 (*Quality Assurance Requirements*) to clearly identify all methods and protocols to be used in the wet weather sampling effort.

6.2.5.6 **Reporting.** The Permittee must submit all data collected to the EPA as required in Part 6.4.2 (*Annual Report*).

6.2.6 **Polychlorinated Biphenyls (PCB) Monitoring**
If the Permittee chooses to monitor/assess for PCBs in MS4 catch basin sediment solids, the Permittee must collect and analyze samples from at least two locations using EPA Method 8082 and a quantitation level for total PCBs no greater than 10 µg/kg dry weight.

6.2.7 **Quality Assurance Requirements**
The Permittee must develop a Quality Assurance Project Plan (QAPP) for any monitoring or quantitative assessment activities conducted in compliance with this Permit. Any existing QAPP may be modified to meet the requirements of this Part.

6.2.7.1 **QAPP Content**: The QAPP must be designed to assist the Permittee in planning for the collection and analysis of any stormwater discharge, receiving water quality, catch basin sediments, and/or other types of information

collected in compliance with this Permit, and in explaining data anomalies when they occur.

At a minimum, the QAPP must reflect the content specified in the EPA documents listed in Part 6.2.7.1.6 below, including:

6.2.7.1.1 Details on the number of samples, identified sampling locations, type of sample containers, preservation of samples, holding times, analytical detection and quantitation limits for each target compound, analytical methods, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements;

6.2.7.1.2 A map with GPS coordinates indicating the location of each monitoring point;

6.2.7.1.3 Qualifications and training of all personnel involved with water quality and discharge sampling;

6.2.7.1.4 Specifications for the collection and analysis of quality assurance samples for each sampling event, including matrix spiked and duplicate samples and analysis of field transfer blanks (sample blanks); and,

6.2.7.1.5 Name(s), address(es), and telephone number(s) of the laboratories used by, or proposed to be used by, the Permittee.

6.2.7.1.6 **QAPP Procedures**: Throughout all sample collection and analysis activities, the Permittee must use the EPA-approved and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). Copies of these documents can be found at *http://www.epa.gov/quality/qs-docs/g5-final.pdf*

6.2.7.2 **QAPP Updates and Availability**

6.2.7.2.1 The Permittee must amend and update the QAPP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAPP.

6.2.7.2.2 Copies of the QAPP must be maintained by the Permittee as part the Monitoring/Assessment Plan, updated as necessary, and made available to EPA and/or IDEQ upon request.

6.2.8 **Analytical Methods**

Sample collection, preservation, and analysis must be conducted according to sufficiently sensitive methods/test procedures approved under 40 CFR §136, unless otherwise approved by the EPA, unless another method is required under 40 CFR subchapters N or O, or other test procedures have been specified in this Permit and/or approved by the EPA as an alternative test procedure under 40 CFR §136.5. Where an approved 40 CFR § 136 method does not exist, and other test procedures have not been specified, any available method may be used after approval from the EPA.

The Permittee must use sufficiently sensitive analytical methods as follows:

6.2.8.1 Permittee must use a method that detects and quantifies the level of the pollutant, or

6.2.8.2 Permittee must use a method that can achieve a maximum Minimum Level (ML) less than or equal to those specified in Table 6.2.8 below;

6.2.8.3 Permittee may request different MLs. The request must be in writing and must be approved by the EPA.

Table 6.2.8: Minimum Levels

Pollutant & CAS No. (if available)	Minimum Level in µg/L, unless otherwise specified
Total Ammonia (as N)	50
Cadmium, Total (7440-43-9)	0.1
Copper, Total (7440-50-8)	2.0
Dissolved oxygen	0.2 mg/L
Total Hardness	200 as CaCO3
Lead, Total (7439-92-1)	0.16
Nitrate + Nitrite Nitrogen (as N)	100
Oil and Grease (HEM) (Hexane Extractable Material)	5,000
Soluble Reactive Phosphorus (as P)	10
Phosphorus, Total (as P)	10
Temperature	0.2º C
Total Suspended Solids	5 mg/L
Zinc, Total (7440-66-6)	2.5

6.3 Recordkeeping

6.3.1 **Retention of Records.**

The Permittee must retain records and information documenting implementation of all control measures required by this Permit (including a copy of this Permit and all Annual Reports) for a period of at least five years from the date of the report, sample, or measurement, or for the term of this Permit, whichever is longer. This period may be extended at the request of the EPA or IDEQ at any time.

Information and records includes, but is not limited to, records of all data or information used to develop and implement the SWMP control measures and/or used to complete the application for this Permit; such material may include inspection and maintenance records; all monitoring, calibration, and monitoring equipment maintenance records; all original strip chart recordings for any continuous monitoring instrumentation; copies of reports required by this Permit; etc.

6.3.2 **Availability of Records.**

At a minimum, the Permittee must retain all records associated with this Permit in a location and format that are accessible to the EPA and IDEQ. The Permittee must make all records described above available to the public if requested to do so in writing. The public must be able to view the records during normal business hours. The Permittee may charge the public a reasonable fee for copying requests.

The Permittee must submit the records referred to in Part 6.3.1 above to the EPA and IDEQ when such information is requested**.**

6.4 Reporting Requirements

At a minimum, the Permittee must submit reports and/or documents required by this Permit to the EPA and IDEQ in an electronic portable document format (PDF) that is saved and stored on a compact disc or other portable electronic storage device.

All submittals must be sent to the Addresses in Appendix A.

6.4.1 **Electronic Copy Submissions using NetDMR**

Prior to the Permit expiration date, the EPA may provide the Permittee with instructions for submitting required Annual Reports and/or other documents electronically using NetDMR. The Permittee may then use NetDMR for this Permit only after requesting and receiving permission from EPA Region 10. After a Permittee begins using NetDMR, the Permittee is no longer required to submit such materials to the EPA and IDEQ via U.S. Postal Mail.

6.4.2 **Annual Report.**

No later than **December 1** of each year beginning in **Calendar Year 2020** the Permittee must submit an Annual Report to the EPA and IDEQ. The EPA recommends the Permittee use the Annual Report Format provided in Appendix B.

6.4.2.1 The reporting period for the Year 1 Annual Report will be from **October 1, 2019 – September 30, 2020.** Reporting periods for subsequent Annual Reports are specified in Table 6.4.2 below.

Table 6.4.2 Annual Report Deadlines*		
	Reporting Period	Due Date
Year 1 Annual Report	October 1, 2019 – September 30, 2020	December 1, 2020
Year 2 Annual Report	October 1, 2020 – September 30, 2021	December 1, 2021
Year 3 Annual Report	October 1, 2021 –September 30, 2022	December 1, 2022
Year 4 Annual Report	October 1, 2022 –September 30, 2023	December 1, 2023
Year 5 Annual Report	October 1, 2023 –September 30, 2024	September 30, 2024

6.4.2.2 The EPA recommends the Permittee use the Annual Report Format provided in Appendix B. The Annual Report must reflect the status of the Permittee's implementation of the Permit requirements during the relevant reporting period, and must include:

6.4.2.2.1 Any summaries, descriptions, and/or other information the Permittee uses to demonstrate compliance with the Permit during the relevant reporting period.

6.4.2.2.2 A current website address where the Permittee's SWMP Document is available as an electronic portable data format (PDF) document;

6.4.2.2.3 If applicable, notification to the EPA and IDEQ that the Permittee is relying on another Permittee or outside entity to satisfy any obligations under this Permit;

6.4.2.2.4 Notification of any annexations, incorporations, or jurisdictional boundary changes resulting in an increase or decrease in the Permittee's area of responsibility during the reporting period; and

6.4.2.2.5 Point(s) of contact responsible SWMP implementation for the Permittee, and for authorization, certification, and signature pursuant to Part 8.5 (*Signatory Requirements*).

6.4.2.3 The Permittee must make a copy of each Annual Report (including any required attachments) available to the public through the Permittee-maintained website required by Part 3.1.8 (*Publicly Accessible Website*).

6.4.3 **Monitoring/Assessment Report**

The Permittee must submit a final report summarizing any/all monitoring/assessment data collected during the permit term as an attachment to the Permit Renewal Application required by Part 8.2 no later than **April 3, 2024**. All Final Monitoring/Assessment Reports must summarize and evaluate the information collected, and include reference to:

6.4.3.1 the date, exact place, and time of sampling or measurements;

6.4.3.2 the name(s) of the individual(s) who performed the sampling or measurements;

6.4.3.3 the date(s) analyses were performed;

6.4.3.4 the names of the individual(s) who performed the analyses; the analytical techniques or methods used; and

6.4.3.5 the results of such analyses, including both visual and narrative summary interpretation of the data collected, a discussion of any quality assurance issues, and a narrative discussion comparing data collected to any previously collected or historical information, as appropriate. Raw monitoring data must be submitted in a spreadsheet or text-format electronic file.

6.4.4 **Pollutant Reduction Activity Report**

The Permittee must submit a Pollutant Reduction Activity Report summarizing actions conducted during the Permit term to reduce pollutant loadings from the Permittee's MS4. The Pollutant Reduction Activity Report must be submitted as an attachment to the Permit Renewal Application required by Part 8.2 no later than **April 3, 2024***.* The final Pollutant Reduction Activity Report must summarize the actions identified in Part 4 and must quantify any load reductions accomplished to date.

6.5 Addresses

Any reports or submittals required by this Permit must be sent to the Addresses listed in Appendix A.

7 COMPLIANCE RESPONSIBILITIES

7.1 Duty to Comply

The Permittee must comply with all conditions of this Permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

7.2 Penalties for Violations of Permit Conditions

7.2.1 **Civil and Administrative Penalties.**

Pursuant to 40 CFR §19 and the CWA, any person who violates sections 301, 302, 306, 307, 308, 318 or 405 of the CWA, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the CWA, is subject to a civil penalty not to exceed the maximum amounts authorized in the United States Code (USC) by section 309(d) of the CWA and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $54,833 per day for each violation).

7.2.1.1 **Administrative Penalties**: Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR §19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by section 309(g)(2)(A) of the CWA and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) [currently $16,000 per day for each violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500]. Pursuant to 40 CFR §19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by section 309(g)(2)(B) of the CWA and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) [currently $21,933 per day for each violation, with the maximum amount of any Class II penalty not to exceed $274,159].

7.2.1.2 **Criminal Penalties**:

7.2.1.2.1 **Negligent Violations**.

The CWA provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

7.2.1.2.2 **Knowing Violations**.

Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

7.2.1.2.3 **Knowing Endangerment**.

Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

7.2.1.2.4 **False Statements**.

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or both. The CWA further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

7.3 Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for the Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Permit.

7.4 Duty to Mitigate
The Permittee must take all reasonable steps to minimize or prevent any discharge or disposal in violation of this Permit that has a reasonable likelihood of adversely affecting human health or the environment.

7.5 Proper Operation and Maintenance
The Permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the Permittee to achieve compliance with the conditions of this Permit. Proper operation and maintenance also includes BMPs, adequate laboratory controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of this Permit.

7.6 Toxic Pollutants
The Permittee must comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

7.7 Planned Changes.
The Permittee must give notice to the Director and the responsible IDEQ office as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

- The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR §122.29(b); or
- The alteration or addition could significantly change the nature or increase the quantity of the pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the permit.

7.8 Anticipated Noncompliance
The Permittee must give advance notice to the Director and IDEQ, using the addresses provided in Appendix A, of any planned changes in the permitted facility or activity which may result in noncompliance with this Permit.

7.9 Twenty-Four Hour Notice of Noncompliance Reporting
The Permittee must report to EPA the following occurrences of noncompliance by telephone at (206) 553-1846, within 24 hours from the time the Permittee becomes aware of the following circumstances; see also Appendix A.2:

- Any discharge to or from the MS4 which could result in noncompliance that may endanger human health or the environment;
- Any unanticipated bypass that results in or contributes to an exceedance of any effluent limitation in this Permit. See Part 7.106.10 (*Bypass of Treatment Facilities*);
- Any upset that results in or contributes to an exceedance of any effluent limitation in this Permit. See Part 6.11 (*Upset Conditions*).

7.9.1 Written Report
The Permittee must also provide a written submission within five (5) business days of the

time that the Permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times; the estimated time noncompliance is expected to continue if it has not been corrected; and all steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The Permittee must submit its written report to EPA and IDEQ as specified in Appendix A.

7.9.2 **Written Report Waiver**
EPA may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.

7.10 Bypass of Treatment Facilities

7.10.1 **Bypass not exceeding limitations.**
The Permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 7.10.2 and 7.10.3 of this Part.

7.10.2 **Notice**

7.10.2.1 Anticipated bypass: If the Permittee knows in advance of the need for a bypass, it must submit prior notice, to the Director, if possible at least 10 days before the date of the bypass.

7.10.2.2 Unanticipated bypass: The Permittee must submit notice of an unanticipated bypass as required under Part 7.9 (*Twenty-four Hour Notice of Noncompliance Reporting*).

7.10.3 **Prohibition of Bypass.**
Bypass is prohibited, and the Director may take enforcement action against the Permittee for a bypass, unless:

- The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
- The Permittee submitted notices as required under Part 7.10.2 above.

7.10.4 **Optional Approval.**
The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in Part 7.10.3.

7.11 Upset Conditions

7.11.1 **Effect of an Upset.**

An upset constitutes an affirmative defense to an action brought for noncompliance with a technology-based permit effluent limitation if the Permittee meets the requirements of Part 7.11.2of this section. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

7.11.2 **Conditions Necessary for a Demonstration of Upset.**

To establish the affirmative defense of upset, the Permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- An upset occurred and that the Permittee can identify the cause(s) of the upset;
- The permitted facility was at the time being properly operated;
- The Permittee submitted notice of the upset as required under Part 7.9 (*Twenty-four Hour Notice of Noncompliance Reporting*) and,
- The Permittee complied with any remedial measures required under Partt 7.4 (*Duty to Mitigate*).

7.11.3 **Burden of proof.**

In any enforcement proceeding, the Permittee seeking to establish the occurrence of an upset has the burden of proof.

7.12 Other Noncompliance

The Permittee must report all instances of noncompliance, not required to be reported within 24 hours, as part of each Annual Report. Such noncompliance reports must contain all the information listed above in Part 7.9.1.

7.13 Removed Substances

All collected screenings, grit, solids, sludges, filter backwash water, decant water, and/or other pollutants removed in the course of maintenance, and/or treatment or control of stormwater and other wastewaters must be managed and disposed of in a manner such as to prevent such pollutants from entering the waters of the U.S.

8 GENERAL REQUIREMENTS

8.1 Permit Actions.

This Permit or coverage under this Permit may be modified, revoked and reissued, or terminated for cause by the EPA as specified in 40 CFR §§122.62, 122.64, or 124.5. The filing of a request by the Permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

8.2 Duty to Reapply

If the Permittee intends to continue its operational control and management of discharges from the MS4 as regulated by this Permit after the Permit expiration date, the Permittee must apply for and obtain a new permit. In accordance with 40 CFR §122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Director, the Permittee must submit an application at least 180 days before the Permit expiration date, or no later than **April 3, 2024.**

8.2.1 Contents of a Permit Renewal Application

The Permit Renewal Application must contain the information required by 40 CFR 122.21(f) which includes: name and mailing addresses of the Permittee that operate the MS4(s), and the names and titles of the primary administrative and technical contacts for the Permittee. In addition, the Permittee must identify the identification number of the existing NPDES MS4 permit; and any previously unidentified water bodies that receive discharges from the MS4. The following attachments must be submitted as part of a complete Permit Renewal Application:

8.2.1.1 Updated SWMP Document, as required by Part 2.5.3 and described in Appendix B;

8.2.1.2 MS4 Map, and the accompanying Outfall Inventory, as required by Part 3.2.2;

8.2.1.3 List of MS4 outfall locations with dry weather flows identified by the Permittee as being associated with irrigation return flows and/or groundwater seepage,

including latitude/longitude and physical description/characteristics, as required by Part 3.2.6.2;

8.2.1.4 Enforcement Response Policy for Construction Site Runoff Control, as required by Part 3.3.6;

8.2.1.5 Enforcement Response Policy for Permanent SW Management Controls, as required by Part 3.4.5.2;

8.2.1.6 If applicable, a written summary of the Permittee's adaptive management actions to date, as required by Part 5.5;

8.2.1.7 If applicable, a Final Report summarizing any required Monitoring/Assessment activities; see Part 4 and Part 6.4.3; and

8.2.1.8 If applicable, a Final Report summarizing implementation and effectiveness of Pollutant Reduction Activities to date; see Part 4 and Part 6.4.4.

8.3 Duty to Provide Information

The Permittee must furnish to the EPA and IDEQ, within the time specified in the request, any information that the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit, or to determine compliance with this Permit. The Permittee must also furnish to the EPA or IDEQ, upon request, copies of the records required to be kept by this Permit.

8.4 Other Information

When the Permittee becomes aware that it failed to submit any relevant facts in a Notice of Intent, or that it submitted incorrect information in a NOI, permit application, or any report or document to the EPA or IDEQ, it must promptly submit the omitted facts or corrected information in writing.

8.5 Signatory Requirements

All permit applications, NOIs, reports, or information submitted to the EPA and IDEQ must be signed and certified as follows:

8.5.1 **All applications must be signed and certified:**

- For a corporation: by a principal corporate officer.
- For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
- For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

8.5.2 **Duly Authorized Representative.**

All Annual Reports required by this Permit and other information requested by the EPA or IDEQ must be signed by a person described in Part 8.5.1 above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

8.5.2.1 The authorization is made in writing by a person described above and submitted to the Director;

8.5.2.2 The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity,

Such as the position of plant manager, owner or operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

8.5.2.3 Written authorization is submitted to the Director and IDEQ.

8.5.3 **Changes to Authorization.**
If an authorization under Part 8.5.2 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 8.5.2 must be submitted to the EPA and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

8.5.4 **Certification.**
Any person signing a document under this Part must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

8.6 Availability of Reports

In accordance with 40 CFR §2, information submitted to the EPA pursuant to this Permit may be claimed as confidential by the Permittee. In accordance with the CWA, permit applications, permits, and effluent data are not considered confidential. Any confidential claim must be asserted at the time of submission by stamping the words “confidential business information” on each page containing such information. If no claim is made at the time of submission, the EPA may make the information available to the public without further notice to the Permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR §2, Subpart B (Public Information) and 41 Federal Register 36924 (September 1, 1976), as amended.

8.7 Inspection and Entry

The Permittee must allow the Director; IDEQ; or an authorized representative (including an authorized contractor acting as a representative of the Director), upon the presentation of credentials and other documents as may be required by law, to:

8.7.1 **Enter**
Upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;

8.7.2 **Access**
Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;

8.7.3 **Inspect**
Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and

8.7.4 **Sample, monitor, evaluate or audit**
At reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the CWA, any discharges, substances or parameters at any location.

8.8 Property Rights
The issuance of this Permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

8.9 Transfers
Coverage under this Permit is not transferable to any person except after written notice to the Director of the EPA Region 10 Water Division. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the CWA.

8.10 State/Tribal Laws
Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state/Tribal law or regulation under authority preserved by Section 510 of the CWA. No condition of the Permit releases the Permittee from any responsibility or requirements under other environmental statutes or regulations.

8.11 Oil and Hazardous Substance Liability
Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the Permittee from any responsibilities, liabilities, or penalties to which the Permittee is or may be subject under Section 311 of the Clean Water Act or Section 106 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA).

8.12 Severability
The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

8.13 Re-opener Clause
This Permit is subject to modification, revocation and reissuance, or termination at the request

of any interested person (including the Permittee) or upon EPA initiative. However, permits may only be modified, revoked or reissued, or terminated for the reasons specified in 40 CFR §§122.62 or 122.64, and 40 CFR §124.5. This includes new information which was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance, including but not limited to future monitoring results. All requests for Permit modification must be addressed to the EPA in writing and shall contain facts or reasons supporting the request.

9 DEFINITIONS

Administrator, as used in this Permit without qualifier*,* means the Administrator of the United States Environmental Protection Agency, or an authorized representative [40 CFR §122.2].

Appropriate means reasonable in intensity, duration, and magnitude.

Appropriate Action, as used in Part 3.2.6 of this Permit, means documentation in the Permittee's Annual Reports and SWMP Document of the MS4 outfall location(s) where the Permittee determines that the source of the ongoing dry weather flow is from either irrigation or groundwater seepage.

Best Management Practice, or *BMP,* means schedules of activities, prohibition of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also mean treatment requirements operating procedures, and practices to control runoff, spillage, or leads, sludge, or waste disposal, or drainage from raw material storages. See 40 CFR 122.2 and 122.44(k). For the purposes of this Permit, *BMP* broadly refers to any type of structural or non-structural practice or activity undertaken by the Permittee in the course of implementing its SWMP.

Bioretention means the water quality and water quantity stormwater management practice using the chemical, biological and physical properties of plants, microbes and soils for the removal of pollution from stormwater runoff.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

CFR means the Code of Federal Regulations, which is the official annual compilation of all regulations and rules promulgated during the previous year by the agencies of the United States government, combined with all the previously issued regulations and rules of those agencies that are still in effect.

CGP and/or *Construction General Permit* means the current available version of EPA's NPDES *General Permit for Stormwater Discharges for Construction Activities in Idaho*, Permit No. IDR12- 0000. EPA's CGP is posted on EPA's website at www.epa.gov/npdes/stormwater/cgp.

Common Plan of Development means a contiguous construction project or projects where multiple separate and distinct construction activities may be taking place at different times on different schedules but under one plan. The "plan" is broadly defined as any announcement or piece of documentation or physical demarcation indicating construction activities may occur on a specific plot; included in this definition are most subdivisions and industrial parks

Construction activity includes, but is not limited to, clearing, grading, excavation, and other site preparation work related to the construction of residential buildings and non-residential buildings, and heavy construction (e.g., highways, streets, bridges, tunnels, pipelines, transmission lines and industrial non-building structures).

Control Measure, as used in this Permit, refers to any action, activity, Best Management Practice or other method used to control the discharge of pollutants in MS4 discharges.

CWA means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, 33 U.S.C. § 1251 et seq. [40 CFR §122.2].

Deleterious Materials is defined at IDAPA 58.01.02.010.21, and means any nontoxic substance which may cause the tainting of edible species of fish, taste and odors in drinking water supplies, or the reduction of the usability of water without causing physical injury to water users or aquatic and terrestrial organisms

Director means the Regional Administrator of the EPA Region 10, or the Director of the EPA Region 10 Office of Water and Watersheds. After July 1, 2021, "Director" may also refer to an authorized representative of the Idaho Department of Environmental Quality.

Discharge when used without qualification means the "discharge of a pollutant."

Discharge of a pollutant means any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger" [40 CFR §122.2].

Erosion means the process of carrying away soil particles by the action of water.

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," [40 CFR §122.2]. The terms and conditions of this Permit are a type of effluent limitations, and refers to actions designed to reduce pollutant discharges. See also 40 CFR §122.34 and 81 FR 89337 (Dec. 9, 2016).

Existing Permanent Controls, in the context of this Permit, means post- construction or permanent stormwater management controls designed to treat or control runoff on a permanent basis and that were installed prior to the effective date of this Permit.

Facility means any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

Grab sample means a single water sample or measurement of water quality taken at a specific time.

Green infrastructure means runoff management approaches and technologies that utilize, enhance and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration

and reuse.

Hazardous materials is defined at IDAPA 58.01.02.010.47 and means a material or combination of materials which, when discharged in any quantity into state waters, presents a substantial present or potential hazard to human health, the public health, or the environment. Unless otherwise specified, published guides such as Quality Criteria for Water (1976) by EPA, Water Quality Criteria (Second Edition, 1963) by the state of California Water Quality Control Board, their subsequent revisions, and more recent research papers, regulations and guidelines will be used in identifying individual and specific materials and in evaluating the tolerances of the identified materials for the beneficial uses indicated.

Impaired waters means any water body that does not meet applicable water quality standards for one or more beneficial uses by one or more pollutants. For the purposes of this Permit, *impaired water* includes any water body that IDEQ includes in its 2014 Integrated Report, as a "Category 4a" water of the state for which a total maximum daily load has been completed and approved; as a "Category 4b" water of the state that have pollution control requirements in place other than a TMDL and are expected to meet standards; and/or as a "Category 5" water of the state where a TMDL is necessary. The term impaired water also includes any interstate surface water body that originates in Idaho and flows into Washington that the Washington Department of Ecology categorizes as Category 4a, 4b, or 5 in its latest Water Quality Assessment 305(b) Report and 303(d) List as approved by EPA on July 22, 2016.

Impairment pollutants, for the purposes of this Permit, means any pollutant identified by IDEQ or WDOE as a cause of impairment of any water body that receives MS4 discharges authorized under this Permit. See also "impaired water."

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian Reservation [40 CFR §122.2].

Infiltration is the process by which stormwater penetrates into soil.

Illicit connections include, but are not limited to, pipes, drains, open channels, or other conveyances that have the potential to allow an illicit discharge to enter the MS4.

Illicit discharge means any discharge to a municipal storm sewer that is not composed entirely of stormwater except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges from firefighting activities. See 40 CFR 122.26(b)(2).

Interconnection means the point (excluding sheet flow over impervious surfaces) where the Permittee's MS4 discharges to another MS4 or other storm sewer system, through which the discharge is eventually conveyed to a water of the United States. Interconnections shall be treated similarly to outfalls throughout the Permit.

Low Impact Development or LID means stormwater management and land development techniques, controls and strategies applied at the parcel and subdivision scale that emphasize conservation and use of on-site natural features integrated with engineered, small scale

hydrologic controls to more closely mimic pre-development hydrologic functions.

Method Detection Limit (MDL) means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

Minimum Level (ML) means either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor.

MEP or *maximum extent practicable*, means the technology-based discharge standard for municipal separate storm sewer systems to reduce pollutants in stormwater discharges that was established by Section 402(p) of the Clean Water Act, 33 U.S.C §1342(p).

Minimize means to reduce and/or eliminate to the extent achievable using control measures (including BMPs) that are technologically available, economically practicable, and achievable in light of best industry or municipal practices.

MS4 means "municipal separate storm sewer system," and is used in this document to refer to 'Small Municipal Separate Storm Sewer System' as defined in 40 CFR 122.26(b)(16). The term, as used in the context of this Permit, refers to those portions of the municipal separate storm sewer systems owned and/or operated by the entities named herein. See also *Municipal Separate Storm Sewer,* and *Small MS4.*

Municipality means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA.

Municipal Separate Storm Sewer is defined in 40 CFR §122.26(b)(8) and means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States; (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR §122.2.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of

CWA [40 CFR §122.2].

Nuisance means anything which is injurious to the public health or an obstruction to the free use, in the customary manner, of any waters of the State [IDAPA 58.01.02.010.67].

Outfall is defined at 40 CFR §122.26(b)(9) means a point source (see definition below) at the point where a municipal separate storm sewer discharges to waters of the United States, and does not include open conveyances connecting two municipal separate storm sewers or pipes, tunnels, or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Permanent Stormwater Controls, or practices, permanent controls, and/or *Post-construction stormwater management controls* means those structural and non-structural controls that are designed to treat or control pollutants in stormwater runoff on a permanent basis.

Point Source is defined at 40 CFR §122.2 and means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials [except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)], heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water [40 CFR §122.2].

Pollutant(s) of concern, for the purposes of this Permit, means any pollutant identified by IDEQ or WDOE as a cause of impairment of any water body that receives MS4 discharges authorized under this Permit. See also "impaired water."

*Post- construction stormwater management control*s or "permanent stormwater controls" means those controls designed to treat or control runoff on a permanent basis once construction is complete. See also "new permanent controls" and "existing permanent controls."

Redevelopment, for the purposes of this Permit, means the alteration, renewal or restoration of any developed land or property that results in land disturbance of one acre or more, or less than one acre that is part of a common plan of development or sale that exceeds one acre, and that has one of the following characteristics: land that currently has an existing structure, such as buildings or houses; or land that is currently covered with an impervious surface, such as a parking lot or roof; or land that is currently degraded and is covered with sand, gravel, stones, or other non-vegetative covering.

Source control means practices that control stormwater before pollutants have been introduced

into stormwater.

Stormwater and *storm water runoff* as used in this Permit means stormwater runoff, snow melt runoff, and surface runoff and drainage, and is defined at 40 CFR §122.26(b)(13). "Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined surface water channel or a constructed infiltration facility.

Stormwater Control Measure or *Stormwater Management Program Control Measure*, means the physical, structural, and/or managerial measures that, when used singly or in combination, reduce the downstream quality and quantity impacts of storm water runoff. Also, stormwater control measure means a permit term or condition used to prevent or control the discharge of pollutants. This may include a schedule of activities, prohibition of practices, maintenance procedures, or other management practices. Stormwater control measures may include, but are not limited to, treatment requirements; operating procedures; practices to control plant site runoff, spillage, leaks, sludge, or waste disposal; or drainage from raw material storage. See *best management practices* (BMPs). Minimum stormwater control measures are defined 40 CFR §122.34(b).

Stormwater Management Practice or *Stormwater Management Control* means practices that manage stormwater, including structural and vegetative components of a storm water system.

Stormwater Management Program (SWMP) refers to a comprehensive program to manage the quality of storm water discharged from the municipal separate storm sewer system. For the purposes of this Permit, the SWMP consists of the actions and activities conducted by the Permittee as required by this Permit and described in the Permittee's SWMP Document. A "SWMP Document" is the written summary describing the unique and/or cooperative means by which an individual Permittee or entity implements the specific stormwater management control measures required by this Permit within their jurisdiction.

Stormwater Pollution Prevention Plan (SWPPP) means a site-specific plan designed to describe the control of soil, raw materials, or other substances to prevent pollutants in stormwater runoff; a SWPPP is generally developed for a construction site, or an industrial facility. For the purposes of this Permit, a SWPPP means a written document that identifies potential sources of pollution, describes practices to reduce pollutants in stormwater discharges from the site, and identifies procedures or controls that the site operator will implement to reduce impacts to water quality and comply with applicable Permit requirements.

Small municipal separate storm sewer system, or Small MS4, is defined at 40 CFR 122.26(b)(16) and (17), respectively, and means all separate storm sewers that are: (i) owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States; (ii) not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 CFR 122.26(b)(4) and (b)(7), or designated under paragraph 40 CFR

122.26(a)(1)(v); and (iii) includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

Snow management means the plowing, relocation, and collection of snow.

Total Maximum Daily Load, or TMDL means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for non-point sources, and natural background. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality [IDAPA 58.012.02.010.100].

Toxic Substance is defined at IDAPA 58.01.02.010.102, and means any substance, material or disease-causing agent, or a combination thereof, which after discharge to waters of the State and upon exposure, ingestion, inhalation or assimilation into any organism (including humans), either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, malignancy, genetic mutation, physiological abnormalities (including malfunctions in reproduction) or physical deformations in affected organisms or their offspring. Toxic substances include, but are not limited to, the one hundred twenty-six (126) priority pollutants identified by the EPA pursuant to Section 307(a) of the federal Clean Water Act.

Treatment means the reduction and removal of pollutants from stormwater.

Uncontaminated, for the purposes of this Permit, means that the MS4 discharge does not:

- result in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or
- result in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or
- Contribute to a violation or exceedance of an applicable Idaho Water Quality Standard.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation [40 CFR §122.41(n)].

Waters of the United States or *waters of the U.S*. means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate “wetlands;”

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
(3) Which are used or could be used for industrial purposes by industries in interstate commerce;
(d) All impoundments of waters otherwise defined as waters of the United States under this definition;
(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;
(f) The territorial sea; and
(g) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition [40 CFR §122.2].

APPENDIX A - ADDRESSES & CONTACT INFORMATION

1. Alternative Control Measure Requests, Notifications, and Permit Renewal Applications: Such documents must be signed as required by Part 7.5, and submitted by U.S. Postal Mail to both the EPA and IDEQ addresses below:

Director, Water Division
Attn: ID MS4 Permit Coordinator
U.S. EPA, Region 10
1200 6th Avenue, Suite 155
Mail Code 19-C04
Seattle, Washington 98101

Regional Administrator, Lewiston Regional Office
Water Quality Program
Idaho Department of Environmental Quality
1118 F Street
Lewiston, ID 83501

2. Reporting of Discharges Containing Hazardous Materials or Deleterious Material: The Permittee must immediately report all spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state.

The Permittee must call 911 if immediate assistance is required to control, contain or clean up the spill.

If the Permittee requires no assistance in cleaning up the spill, the Permittee must contact the appropriate IDEQ regional office in A.4 below during normal working hours. After normal working hours, the Permittee must contact the Idaho State Communications Center at 800-632-8000.

If the spilled volume is above federal reportable quantities, the Permittee must contact the National Response Center at 800-424-8802.

See also Part 6.9 (*Twenty-Four Hour Notice of Noncompliance Reporting*).

3. **Annual Reports, including any necessary attachments as required by this Permit:** Such documents must be signed as required by Part 5, and submitted by U.S. Postal Mail to both EPA and IDEQ addresses below:

U.S. EPA, Region 10
Enforcement & Compliance Assurance Division
1200 6th Avenue, Suite 155
Mail Code 20-CO4
Seattle, Washington 98101

Regional Administrator, Lewiston Regional Office
Water Quality Program
Idaho Department of Environmental Quality
1118 F Street
Lewiston, ID 83501

4. General Contact Information for EPA and IDEQ

EPA Region 10	***Toll Free Phone Number***	***Phone Number***
Water Division, NPDES Permitting Section 1200 6th Avenue, Suite 155, Mail Code 19-CO4 Seattle WA 98101	(800) 424-4372, extension 6650.	(206) 553-6650
IDEQ State Office	***Toll Free Phone Number***	***Phone Number***
Surface Water Program 1410 North Hilton Street, Boise, ID. 83706		208-373-0502
IDEQ Regional Office	***Toll Free Phone Number***	***Phone Number***
Lewiston Regional Office 1118 F Street, Lewiston, Idaho 83501	877-541-3304	208-799-4370

APPENDIX B – SWMP DOCUMENT & ANNUAL REPORT TEMPLATES

This Appendix outlines the content of the SWMP Document and Annual Reports and provides an example template for each required document.

Appendix B.1 - SWMP Document Template (see Separate Document)
Appendix B.2 - Annual Report Form (See Separate Document)

Stormwater Phase II Permit and Utility Study Update

City Council Meeting
September 3, 2019

Background

- 1972: Clean Water Act
  - Biological, Chemical, and Physical Integrity
  - NPDES Program (Section 402)
    - Authority to discharge
    - Primary focus on wastewater discharges/treatment facilities

Stormwater Regulations

- 1990: Phase I Stormwater Regulations (Section 402 (p))
  - Medium and Large MS4s over 100,000 population
  - Construction Activities greater than 5 acres
  - Industrial Activities

Stormwater Regulations

- 1999: Phase II Stormwater Regulations
  - Focus on "small MS4s" in urbanized areas (UAs)
    - Population >50,000
  - Construction activities greater than 1 acre
  - Phase-In coverage for MS4s outside UAs
    - Population >10,000
    - Population density >1,000/sq.mile

Phase II Permit Process

- 2007: Notified by EPA as a "potential candidate"
- 2008: Received official designation notice
- 2009: Made application for permit coverage

Phase II Permit Process

- November 2018: Received Draft "Individual" Permit
  - 45-day public comment period
- August 2019: Received the Final Permit
  - Effective Date of October 1, 2019

Phase II MS4 Permit

- Develop, Implement, and Enforce a Stormwater Management Program (SWMP)
- SWMP must include:
  - Public Education and Outreach
  - Illicit Discharge Detection and Elimination
  - Construction and Post Construction Site Runoff Control
  - Pollution Prevention and Good Housekeeping
  - Monitoring and Recordkeeping requirements

Stormwater Permit

- Applicable to the City owned/operated MS4
  - U of I has been notified as a candidate for regulation
- Effective for 5 years
- Stipulated timelines for compliance

Stormwater User Fee Study

- Aspect Consulting
  - Phase I completed in 2018
- Currently in Phase II
- Working on:
  - Program Budget and Financial Plan
  - Customer Billing Database
  - User Fee Ordinance

Questions?

ORDINANCE NO. 2020-

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 05, BY THE ADDITION OF CHAPTER 19, ESTABLISHING A SYSTEM OF STORMWATER USER FEES TO FUND THE PROVISION OF PROPRIETARY STORMWATER SERVICES BY THE CITY TO PROPERTY OWNERS WITHIN CITY'S JURISDICTION; APPROVING ADMINISTRATION OF THE USER FEE SYSTEM; AUTHORIZING STORMWATER USER FEES AND ESTABLISHING A PROCESS FOR PROPERTY OWNERS TO APPEAL THE AMOUNT OF THE FEE; REQUIRING THAT STORMWATER USER FEE REVENUE BE KEPT SEPARATE FROM THE GENERAL FUND AND SPENT ONLY ON STORMWATER CONTROL SYSTEM COSTS; ESTABLISHING ENFORCEMENT PROVISIONS AND PENALTIES FOR NON-PAYMENT OF FEES; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; APPROVING THE PUBLICATION OF A SUMMARY OF THE ORDINANCE WITH THE FULL TEXT AVAILABLE AT CITY HALL; PROVIDING FOR A WAIVER OF THE READING RULES; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

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A. Authority

The City of Moscow (the "City") has authority to:

1. Operate the City Stormwater Control System (hereinafter "System") for the use and benefit of those served by such works, for the promotion of the welfare, and for the improvement of the health, safety, comfort and convenience of the inhabitants of the City. To acquire by gift or purchase, and to construct, reconstruct, improve, better, or extend the System within any part, or partially within City limits, or partially outside of City limits. Issue revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of the System. Prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the State of Idaho and its subdivisions, for the services, facilities and commodities furnished by the System. Prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by the System, and revise such rates, fees, tolls or charges from time to time. The intent is to provide a self-supporting System in perpetuity. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay all bonds and interest thereon; and (b) to provide for

all expenses of operation and maintenance of such works, including reserves therefor. The construction, acquisition, improvement, equipment, custody, operation and maintenance of the System, and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of the governing body of the City, pursuant to I.C. § Title 50 - Municipal Corporations, Chapter 10 Finances, 1027-1042 [Revenue Bond Act].

2. Prevent the flooding of the City or secure its drainage, to assess the cost thereof to the property benefited, and for such purpose may make any improvement or perform any labor on any stream or waterway, either within or without the City limits, when necessary to protect the safety of life and property of the City. The City shall have power to cause any parcel of land within its limits on which water may at any time become stagnant, to be filled or drained in such manner as may be directed by a Resolution of the Council, and such owner or his agent shall, after service of a copy of such Resolution, comply with the directions of such Resolution within the time therein specified; and in case of failure or refusal to do so, it may be done by the City, and the amount of money so expended shall be assessed against such property, pursuant to I.C. § 50-333. Flood Prevention – Drainage.

3. Impose and cause to be collected, fees for those services provided by the City which would otherwise be funded by property tax revenues. The fees collected shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered, pursuant to I.C. § 63-1311. Fees for Services.

4. Clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain, or sewer or any watercourse in the City when not declared, by law, to be navigable, and assess the expense thereof in whole or in part to the property specially benefited thereby, pursuant to I.C. § 50-332. Control of Sewers and Drains.

B. MS4 Permit Compliance

1. To manage stormwater and protect people and property within the City, the City has constructed stormwater drainage components that, along with intertwined natural drainage courses, are part of the overall City Stormwater Control System. The System provides proprietary drainage services to public and private property whose runoff has been allowed to enter the System through direct manmade connections as well as through overland flows. Portions of the System discharge to the South Fork Palouse River, Paradise Creek, and other associated Waters of the United States within Moscow. The majority of the System has been designated as a regulated Municipal Separate Storm Sewer System (MS4) by the US Environmental Protection Agency (EPA).

2. The City has been issued an MS4 Permit by the EPA which authorizes the City to discharge stormwater from the MS4 into Waters of the United States, as long as such discharges are in compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, and as described by the MS4 Permit conditions and requirements. These conditions and requirements impose a regulatory cost associated with the City's provision of drainage services to its customers. Idaho is in the

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process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.

3. The MS4 Permit imposes mandatory requirements on the City in order to legally discharge stormwater from the MS4 into Waters of the United States, including:

   a. Public Education and Outreach on Stormwater Impacts;

   b. MS4 Illicit Discharge Detection and Elimination;

   c. Construction Site Stormwater Runoff Control;

   d. Post-Construction Stormwater Management for New Development and Redevelopment Projects;

   e. Pollution Prevention/Good Housekeeping for City Operations;

   f. Stormwater Pollution Related Monitoring/Assessment Activities;

   g. Stormwater Pollutant Reduction Activities;

   h. Stormwater System Mapping and Planning;

   i. Keeping Stormwater Compliance Records; and

   j. Completing Stormwater Compliance Reports.

4. Failure by the City to comply with MS4 Permit requirements would subject the City to civil and criminal penalties under Federal Law which would place the City's resources and staff at financial, civil, and criminal risk and subject the City stormwater customers to additional financial and regulatory burdens.

C. Compliance with Idaho Statutes and Administrative Requirements for Discharging Stormwater to Groundwater

1. Portions of the City's Stormwater Control System receives stormwater leaving individual properties in the City, which is then deposited into a system of curbs, gutters, ditches, swales, detention basins, open spaces, and other appurtenances that dispose of the drainage. Most drainage is discharged to surface waters; however, some drainage may be disposed of by infiltration into the ground over deep and shallow aquifers. In addition, the City's MS4 permit requires the City to promote, where feasible, the use of on-site retention and infiltration of stormwater runoff for new development and redevelopment projects.

2. The Idaho Department of Environmental Quality (IDEQ) and Idaho Department of Water Resources (IDWR) regulate stormwater drainage over aquifers. Uncontrolled discharges from stormwater systems to groundwater can impact groundwater quality and protected beneficial uses.

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3. Under IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, "Ground Water Quality Rule", activities with the potential to degrade aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best practical methods to the maximum extent practical, and no person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that (a) causes a groundwater quality standard to be exceeded; (b) injures a beneficial use of groundwater; or (c) is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method.

4. IDWR has also adopted Rules and Minimum Standards for the Construction and Use of Injection Wells (IDAPA 37.03.03), which regulates the use of drywells and other shallow injection systems used to dispose of stormwater below the ground surface. Use of a shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of surface or groundwater quality standards that would affect a beneficial use.

5. Failure by the City to comply with IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, Ground Water Quality Rule and IDAPA 37.03.03, Rules and Minimum Standards for the Construction and Use of Injection Wells would subject the City to enforcement actions which would subject City stormwater customers to additional financial and regulatory burdens.

D. Compliance with Lewiston Independent School Dist. No. 1 v. City of Lewiston

1. The City of Lewiston's original stormwater fee was judged to be an unlawful tax rather than a lawful regulatory fee or user fee by the 2nd District Court, whose decision was upheld by the Idaho Supreme Court upon appeal. Lewiston Independent School Dist. No. 1 v. City of Lewiston, 151 Idaho 800, 264 P.3d 907 (2011).

2. Key factors cited by the Court that led to the decision overturning Lewiston's stormwater user fee included:

   a. The Court did not perceive that Lewiston's storm drains provided identifiable benefits and services to properties.

   b. The Court concluded that Lewiston's stormwater fee was not a fee for service but instead was "a revenue generating tax created to benefit the general public by charging all property owners for the privilege of using the City's preexisting stormwater system, regardless of whether they are using the stormwater system or not.".

   c. Lewiston's indication that a portion of stormwater fee revenue would be used to pay for some activities that were not entirely stormwater related, such as street maintenance and rebuilding.

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d. The Court concluded that "the Stormwater Utility has an ad hoc structure" under which Lewiston made "ad hoc determination[s] as to what constituted…stormwater activities."

e. Lewiston charged fees to all owners of property with impervious surfaces with no exceptions for those "whose runoff does not enter the stormwater drain because they have their own stormwater systems or because their neighborhoods are not connected to the stormwater system".

f. The Court concluded that "it is unclear whether the Council has adopted a distinct Stormwater Utility structure separate from the Street Maintenance Department."

g. The Court concluded that fees charged for the stormwater utility did not qualify as regulatory fees under the police power, because the amount charged was not related to the cost of a regulatory or enforcement program.

h. The Court found that although the prior ordinance required that "all fees would be collected and separated from the general revenue," the actual practice was different. "In practice, stormwater fees are comingled with the City's general funds in the City's primary checking account.".

i. According to the Court, "the City did not proceed under the Revenue Bond Act".

3. To address the factors cited by the Court in Lewiston Independent School Dist. No. 1 v. City of Lewiston, the City of Moscow's ordinance and authorized stormwater user fee does the following:

a. Recognizes that, like potable water and sanitary sewer facilities, the City's Stormwater Control System serves a proprietary, rather than regulatory or governmental, function. Fees associated with the provision of stormwater service to property owners are user fees, not incidental regulatory fees.

b. Recognizes that the City's Stormwater Control System provided tangible benefits and services to property owners who use the System and consume System capacity and services. The array of stormwater benefits and services to customers are described in the City's Stormwater User Fee Basis, Rate Structure, and Policy Memorandum prepared by Aspect Consulting, 2019.

c. The user fee authorized by this ordinance is used to recover, on a pro-rata basis, the costs incurred by the City in providing stormwater drainage services including the cost of maintaining the System and complying with all applicable regulations. The system of stormwater user fee is not intended to generate revenues in excess of these costs.

d. Establishes a City Stormwater Department that, like the Water and Sewer Departments, is charged with (1) updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; (2) properly planning, operating,

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maintaining, and constructing the Stormwater Control System; and (3) complying with all applicable stormwater regulations.

e. Only charges fees to properties actually receiving stormwater service, i.e., those discharging stormwater, whether directly or indirectly, to the City's Stormwater Control System.

f. Allows property owners to seek stormwater fee adjustments, or elimination of fees, through an application and appeal process to reflect their burden on, and services received from, the Stormwater Control System; including exemptions and refusal of service.

g. Prohibits using stormwater user fee revenue to pay for non-stormwater related City costs.

h. Places stormwater user fee revenue in a dedicated stormwater enterprise fund and prohibits co-mingling such revenues with the City's general fund.

i. Requires the City to adopt a detailed and transparent stormwater budget when setting stormwater fees and accounting for how stormwater fee revenue is spent.

j. Relies on authority contained within the Idaho Revenue Bond Act, and other sources of authority cited herein.

WHEREAS, based on the findings hereinabove, it is deemed by the Mayor and City Council to be in the best interest of the City of Moscow that the following amendments be adopted;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1. *That a new Chapter 19, entitled Stormwater User Fees is hereby added to Title 05 of the Moscow Municipal Code as follows*:

SEC.19-1. AUTHORIZATION.

This Chapter is enacted pursuant to the authority vested in the City by Article XII, Section 2 of the Idaho Constitution, the Idaho Revenue Bond Act (I.C. § 50-1027 - 50-1042) and Idaho Code Sections 50-301, 50-332, 50-333 and 63-1311.

Sec. 19-2. PURPOSE.

The purposes of this Chapter are:

To equitably allocate the operation, maintenance, improvement, and regulatory compliance expenses of the City's Stormwater Control System to users of the System in proportion to the level and type of services received from the System.

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To provide for the establishment of a system of stormwater user fees and provide that the fees collected are set aside and designated solely for use for the maintenance, operations, improvements, regulatory requirements, and program costs of the City's Stormwater Control System.

To provide that all services mandated or authorized by this Chapter be furnished to customers at the lowest possible cost.

To establish standards and implement programs necessary and/or convenient to comply with the requirements of the City's MS4 Permit as well as the rules governing collection, treatment, detention and disposal of stormwater over the shallow and deep aquifers that underlie Moscow.

To establish a City Stormwater Department to operate and maintain the City's Stormwater Control System and to manage stormwater and drainage issues within the City.

Sec. 19-3. DEFINITIONS.

For purposes of this Chapter, the following terms and acronyms shall have the meaning herein set forth unless the text of the use of the term clearly requires otherwise:

Administrator or Stormwater Administrator. The person serving under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Department, the Stormwater Control System, and the City's system of stormwater user fees.

Impervious Surface. Material which resists or blocks the passage of water into soils as would occur under natural conditions. Examples include but are not limited to, rooftops, roads, alleys, parking lots, sidewalks, patios, decks, and swimming pools.

MS4 Permit. The national pollutant discharge elimination system (NPDES) permit issued to the City by the Environmental Protection Agency in compliance with the provisions of the Clean Water Act, 33 USC section 1251 et seq., as amended by the Water Quality Act of 1987, PL 100-4, for stormwater discharges from small municipal separate storm sewer systems also known and referred to as an MS4 Permit. Idaho is in the process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.

Stormwater Control System. The City-maintained system of ditches, channels, swales, culverts, basins, treatment systems, gutters, inlets, storm pipes, outfalls, ponds, creeks, river, wetlands, and any other appurtenances necessary, useful or convenient for the orderly collection, conveyance, treatment, and disposal of municipal stormwater runoff.

Stormwater Fund. A dedicated stormwater enterprise fund that is kept separate from the City's General Fund and solely used to cover stormwater costs, such as but not limited to: updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; studying, planning, operating, maintaining, and constructing the Stormwater Control System; and complying with all applicable stormwater regulations.

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Stormwater Review Board. A group of people chosen by the Deputy City Supervisor to review appeals of the Stormwater Administrator's user fee determination.

Stormwater User Fee. A reasonably individualized fee charged to property owners or tenants for stormwater services provided by the City Stormwater Control System.

Sec. 19-4. APPLICABILITY.

All property, within the corporate limits of the City, containing impervious surface that drains stormwater runoff into the City's Stormwater Control System is subject to this Chapter. Properties that are not subject to the Chapter are exempt from the Stormwater user fee created by this Chapter.

Sec. 19-5. STORMWATER DEPARTMENT CREATED.

A. Stormwater Department Created. There is hereby created and established a Stormwater Department for the City. The Stormwater Department will have regulatory authority and responsibility for planning, design, construction, maintenance, operation, and administration of the City's Stormwater Control System, and the services provided by the City's Stormwater Control System.

B. Stormwater Department's Regulatory Functions. The Stormwater Department is charged with administering and enforcing the City's existing stormwater ordinances, codes, and standards, as well as developing, administering, and enforcing future stormwater ordinances, codes, and standards necessary to comply with State and Federal regulations affecting the City's provision of stormwater services to customers within the City.

Sec. 19-6. STORMWATER DEPARTMENT ADMINISTRATION.

A. Stormwater Department Administration. The Stormwater Department shall be administered under the direction of the Deputy City Supervisor. The Stormwater Department will be administered in a manner similar to the City's existing Public Utilities.

B. Stormwater Administrator. The Stormwater Department, Stormwater Control System, and City system of stormwater user fees shall be under the supervision of the Stormwater Administrator who shall serve in such capacity under the direction of the Deputy City Supervisor.

C. Annual Reports. In order for the City Council to exercise its authority under I.C. § 50-1031, the Stormwater Department shall provide the Council with an annual report of the activities funded by stormwater user fees during the preceding year and a projection of the upcoming year's expenditures.

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Sec. 19-7. POLICIES AND PROCEDURES.

The Administrator is authorized to establish and update, from time to time, written policies and procedures to implement the provisions of this Chapter.

Sec. 19-8. STORMWATER USER FEE.

A. Stormwater User Fee. The City may establish a system of periodic stormwater user fees that are proportionate to the costs of providing proprietary stormwater services to customers within the City in accordance with the costs of the operation and maintenance of the City's Stormwater Control System, including administration, planning, repair, improvement, regulatory compliance, and other stormwater costs, and for any redemption of bonds that are used to finance any system improvement.

B. Fee Established by Resolution. The fee authorized by this Chapter will be set by Resolution of the City Council.

C. Nature and Purpose of User Fee. The fees authorized by this Ordinance are not a one-time impact fee, capitalization fee, or buy-in fee. Rather, the fees will be charged to users on an ongoing, periodic basis. Revenue collected may be used for ongoing and recurring stormwater expenses, such as operations and maintenance, as well as capital expenditures and retirement of debt associated with capital expenditures.

D. Quantification of User Fee. The amount of a customer's stormwater user fee shall be based on the user's pro-rata share of the cost of service a City stormwater customer receives from the City Stormwater Control System. The fee shall be reasonably determined based on the volume of runoff from a customer's property (as reflected in the extent of impermeable surface) into the City Stormwater Control System. Impervious surface area is well correlated with urban runoff volume; therefore, the volume of runoff into the City Stormwater Control System will be based on the amount of impervious surface on a customer's property that drains into the City Stormwater Control System. In addition, to better individualize user fees, customers may provide information to the City under Subsections 'E' and 'I' of this Section regarding on-site factors that eliminate or reduce the volume of customer's runoff, or the pollution it contains.

E. System of User Fee Credits. The City shall provide a written system of user fee credits to better individualize fees to reflect a customer's stormwater burdens and services. The system of user fee credits will reasonably account for on-site practices or conditions that significantly (1) affect the expected volume and pollution of runoff flowing from a customer's property to the City Stormwater Control System; or (2) otherwise affect the cost for the City to manage and dispose of the customer's runoff. Some classes of stormwater customers may provide information to the Administrator and apply for applicable user fee credits. A decision regarding credit eligibility will be made by the Administrator within thirty (30) days of receiving a complete application. The burden of proof for initial and ongoing credit eligibility shall lie with the customer. The City may, at its discretion, charge

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a credit application processing fee that reasonably reflects the administrative cost of reviewing and processing the application.

F. Exemption from User Fee. Properties that do not use the Stormwater Control System are exempt from the Stormwater User Fee because: (1) the property has no impermeable surface, (2) the property is served by its own stormwater system such that the property's stormwater runoff does not discharge to the City's Stormwater Control System, or (3) the property is directly and indirectly hydraulically disconnected from the City's Stormwater Control System. Customers may submit a request for an exemption under Subsections 'E' and 'I' of this section.

G. Periodic Revisions to Fee Calculation. The City shall periodically revisit the stormwater fee structure and rate and make adjustments as necessary to account for the most recent information on anticipated stormwater costs, debt obligations, revenue on hand, and anticipated fees and other revenue.

H. Customer Database. The City will use readily available information, such as aerial photographs or other data, to prepare a stormwater customer database containing calculations of impervious surface area on parcels within the City, along with parcel ownership. The City shall keep and maintain the customer database of impervious surface and fees over time. The City will recalculate a customer's impervious surface and fee, including reviewing whether the property is exempt, each time additional development occurs on the property that would significantly increase or decrease the amount of the fee. The recalculation of the fee will be triggered by an application for a building or site development permit.

I. Stormwater User Fee Corrections. The City shall provide a process for customers to submit information to the Administrator to adjust or eliminate their stormwater user fee. A customer who believes that their fee is based on an incorrect calculation of impervious surface, that the subject property does not receive any drainage services from the City Stormwater Control System (for the reasons described in Subsection F above), or otherwise has an incorrect fee, may submit a written recalculation request to the Administrator within thirty (30) days after the fee is established or adjusted. The request must identify the basis for disagreement with the user fee and be accompanied by relevant supporting documentation. The City shall determine whether the fee should be recalculated and, if so, recalculate the fee, and notify the requestor, in writing, no later than thirty (30) calendar days following receipt of the completed written request for recalculation.

J. Appeal of Stormwater User Fee Correction Decision. The Administrator's decision regarding user fee credits or correction of user fees, as allowed under Subsections 'E' and 'I' of this Section, may be appealed to the Stormwater Review Board by submitting a written appeal to the Administrator within thirty (30) calendar days after the Administrator issues its decision. The request must identify the error(s) committed by the City in recalculating the fee and any other basis for claim of incorrect calculation and be accompanied by relevant supporting documentation. The Stormwater Review Board will not hold a public hearing on the appeal but will meet and review all submitted information and make a determination on

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the appeal. A final written decision from the Review Board will be issued no later than thirty (30) calendar days following receipt of the completed written request for recalculation unless the appellant agrees to an extension.

K. Refund of Overpayment. The City will refund any stormwater user fee overpayment, plus any statutory interest, within thirty (30) calendar days if either the Administrator or the Review Board determines that a user fee was improperly calculated as allowed by this Section.

Sec. 19-9. Billing and Enforcing Payment of Stormwater User Fees.

All billings for user fees charged under the provisions of this Chapter will be billed and collected in the same manner as the City's other Public Utilities as it relates to billing, payment, delinquency, and penalty provisions.

Sec. 19-10. STORMWATER FUND AND EXPENDITURES.

A. Segregation of Funds. All fees and charges received and collected under authority of this Chapter shall be deposited and credited to a special enterprise fund to be designated as the Stormwater Fund. All revenue accruing to the Stormwater Fund shall be maintained in a separate bank or financial account from, and shall not be co-mingled with, the City's general revenue fund.

B. Accounting of Receipts and Expenditures. The accounts of the Stormwater Fund created by this Section shall show all receipts and expenditures for the maintenance, construction, operation, upkeep and repair of the City's Stormwater Control System, including the payment of any System bonds issued by the City, which, from time to time, may be outstanding.

C. Other Revenue Sources. From time to time, the City, in its discretion, may deposit other monies into the Stormwater Fund to be used to cover stormwater costs, including, for example, revenue from grants, damages or penalties collected, or contributions of general revenue of the City.

D. Expenditure on System Expenses Only. All funds generated by this Chapter, as well as other deposits to the Stormwater Fund as provided in Subsection C, will only be expended on the operation, maintenance and other expenses, including regulatory compliance, of the Stormwater Control System. No general street maintenance, repairs, or improvements such as filling potholes, repaving, striping, winter sanding, removal of limbs and other large debris from streets, or other general fund expenditures may be charged to the Stormwater Fund; however, repair and replacement of curbs and gutters and removal of pollutants from the Stormwater Control System via sweeping or other methods is authorized in order to maintain the integrity of the Stormwater Control System and comply with applicable regulations. The Stormwater Administrator and the Finance Director are charged with adopting additional policies and guidelines to ensure that monies in the Stormwater Fund are only spent on valid drainage system expenses.

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E. Availability of Deposited Funds. As provided by law, when budgeted and appropriated, the funds and credits to the account of the Stormwater Fund shall be available for the payment of maintenance, operation, repairs, and upkeep of the Stormwater Control System, compliance with the MS4 Permit, and to the extent legally available, for payment into a sinking fund established for the payment of the principal and interest of any general obligation system bonds which shall from time to time be outstanding.

F. Independence from the General Fund. The Stormwater Department shall operate independently of the City's general fund and shall have the same relationship to the City as the City's current Utility Programs. Upon creation of the Stormwater Department, the City's drainage facilities and assets, other than streets, shall be transferred to the Stormwater Department in accordance with Governmental Accounting Standards Board (GASB) Financial Reporting Principles.

SECTION 2. EFFECT ON OTHER ORDINANCES. *To the extent any provision of this Ordinance is inconsistent with any other City ordinance or resolution enacted prior to the date of this Ordinance, this Ordinance shall control.*

SECTION 3. ENFORCEMENT. *The adoption of this Ordinance shall not, in any manner, affect any prosecution for violation of any other ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any other ordinance, or in any manner affect the validity of any action heretofore taken by the City of Moscow City Council, or the validity of any such action to be taken upon matters pending before the City Council on the effective date of this Ordinance.*

SECTION 4. SEVERABILITY. *The provisions of this Ordinance shall be deemed severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair the validity of any of the remaining provisions, clauses, sentences, subsections, words or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word, or part, had not been included therein, and if such person or circumstance to which the Ordinance or part thereof is held inapplicable, had been specifically exempt therefrom.*

SECTION 5. EFFECTIVE DATE. *After its passage and adoption, a summary of this Ordinance, under the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Moscow, and upon such publication shall be in full force and effect.*

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PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2020.

_____
Bill Lambert, Mayor

ATTEST:

_____
Laurie M. Hopkins, City Clerk

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MEMORANDUM

To: **Gary Riedner, City Supervisor**

From: **Mia Bautista, City Attorney**

Date: **February 14, 2020**

Re: **Draft Stormwater Ordinance**

Gary,

I have been a member of the City team that worked with Aspect Consulting LLC on the creation of the attached Draft Stormwater Ordinance. My review focused on ensuring the draft ordinance comports with established Idaho law. The Draft Ordinance correctly cites the Authority by which the City is permitted to create a Stormwater Control System and charge user fees that are directly related to the use and benefit of the Stormwater System. The Draft Stormwater Ordinance also addresses the issues that arose when the City of Lewiston tried to impose a stormwater fee that was later judged to be an unlawful tax rather than a regulatory fee. The Draft Stormwater Ordinance correctly identifies the issues relied upon by the Court in its decision to overturn Lewiston's stormwater ordinance in *Independent School District No. 1 v. City of Lewiston*, 151 Idaho 800, 264 P.3d 907 (2011).

The City of Moscow's Draft Stormwater Ordinance and authorized user fee addresses the factors cited by the Court in *Lewiston Independent School Dist. No. 1 v. City of Lewiston*, by doing the following:

a. Recognizes that, like potable water and sanitary sewer facilities, the City's Stormwater Control System serves a proprietary, rather than regulatory or governmental, function. Fees associated with the provision of stormwater service to property owners are user fees, not incidental regulatory fees.

b. Recognizes that the City's Stormwater Control System provided tangible benefits and services to property owners who use the System and consume System capacity and services. The array of stormwater benefits and services to customers are described in the City's Stormwater User Fee Basis, Rate Structure, and Policy Memorandum prepared by Aspect Consulting, 2019.

c. The user fee authorized by this ordinance is used to recover, on a pro-rata basis, the costs incurred by the City in providing stormwater drainage services including the cost of maintaining the System and complying with all applicable regulations. The system of stormwater user fee is not intended to generate revenues in excess of these costs.

d. Establishes a City Stormwater Department that, like the Water and Sewer Departments, is charged with (1) updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; (2) properly planning, operating, maintaining, and constructing the Stormwater Control System; and (3) complying with all applicable stormwater regulations.

e. Only charges fees to properties actually receiving stormwater service, i.e., those discharging stormwater, whether directly or indirectly, to the City's Stormwater Control System.

f. Allows property owners to seek stormwater fee adjustments, or elimination of fees, through an application and appeal process to reflect their burden on, and services received from, the Stormwater Control System; including exemptions and refusal of service.

g. Prohibits using stormwater user fee revenue to pay for non-stormwater related City costs.

h. Places stormwater user fee revenue in a dedicated stormwater enterprise fund and prohibits co-mingling such revenues with the City's general fund.

i. Requires the City to adopt a detailed and transparent stormwater budget when setting stormwater fees and accounting for how stormwater fee revenue is spent.

j. Relies on authority contained within the Idaho Revenue Bond Act, and other sources of authority cited herein.

It is my legal opinion that the City of Moscow's Draft Stormwater Ordinance comports with established Idaho law.

ORDINANCE NO. 2020-

AN ORDINANCE OF THE CITY OF MOSCOW, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE AMENDMENT OF MOSCOW CITY CODE TITLE 05, BY THE ADDITION OF CHAPTER 19, ESTABLISHING A SYSTEM OF STORMWATER USER FEES TO FUND THE PROVISION OF PROPRIETARY STORMWATER SERVICES BY THE CITY TO PROPERTY OWNERS WITHIN CITY'S JURISDICTION; APPROVING ADMINISTRATION OF THE USER FEE SYSTEM; AUTHORIZING STORMWATER USER FEES AND ESTABLISHING A PROCESS FOR PROPERTY OWNERS TO APPEAL THE AMOUNT OF THE FEE; REQUIRING THAT STORMWATER USER FEE REVENUE BE KEPT SEPARATE FROM THE GENERAL FUND AND SPENT ONLY ON STORMWATER CONTROL SYSTEM COSTS; ESTABLISHING ENFORCEMENT PROVISIONS AND PENALTIES FOR NON-PAYMENT OF FEES; AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE BE DEEMED SEVERABLE; APPROVING THE PUBLICATION OF A SUMMARY OF THE ORDINANCE WITH THE FULL TEXT AVAILABLE AT CITY HALL; PROVIDING FOR A WAIVER OF THE READING RULES; AND PROVIDING FOR THIS ORDINANCE TO BE IN FULL FORCE AND EFFECT FROM THE DATE OF ITS PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

A. Authority

The City of Moscow (the "City") has authority to:

1. Operate the City Stormwater Control System (hereinafter "System") for the use and benefit of those served by such works, for the promotion of the welfare, and for the improvement of the health, safety, comfort and convenience of the inhabitants of the City. To acquire by gift or purchase, and to construct, reconstruct, improve, better, or extend the System within any part, or partially within City limits, or partially outside of City limits. Issue revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of the System. Prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the State of Idaho and its subdivisions, for the services, facilities and commodities furnished by the System. Prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities furnished by the System, and revise such rates, fees, tolls or charges from time to time. The intent is to provide a self-supporting System in perpetuity. The rates, fees, tolls or charges prescribed shall be such as will produce revenue at least sufficient (a) to pay all bonds and interest thereon; and (b) to provide for

all expenses of operation and maintenance of such works, including reserves therefor. The construction, acquisition, improvement, equipment, custody, operation and maintenance of the System, and the collection of revenues therefrom for the service rendered thereby, shall be under the supervision and control of the governing body of the City, pursuant to I.C. § Title 50 - Municipal Corporations, Chapter 10 Finances, 1027-1042 [Revenue Bond Act].

2. Prevent the flooding of the City or secure its drainage, to assess the cost thereof to the property benefited, and for such purpose may make any improvement or perform any labor on any stream or waterway, either within or without the City limits, when necessary to protect the safety of life and property of the City. The City shall have power to cause any parcel of land within its limits on which water may at any time become stagnant, to be filled or drained in such manner as may be directed by a Resolution of the Council, and such owner or his agent shall, after service of a copy of such Resolution, comply with the directions of such Resolution within the time therein specified; and in case of failure or refusal to do so, it may be done by the City, and the amount of money so expended shall be assessed against such property, pursuant to I.C. § 50-333. Flood Prevention – Drainage.

3. Impose and cause to be collected, fees for those services provided by the City which would otherwise be funded by property tax revenues. The fees collected shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered, pursuant to I.C. § 63-1311. Fees for Services.

4. Clear, cleanse, alter, straighten, widen, pipe, wall, fill or close any waterway, drain, or sewer or any watercourse in the City when not declared, by law, to be navigable, and assess the expense thereof in whole or in part to the property specially benefited thereby, pursuant to I.C. § 50-332. Control of Sewers and Drains.

B. MS4 Permit Compliance

1. To manage stormwater and protect people and property within the City, the City has constructed stormwater drainage components that, along with intertwined natural drainage courses, are part of the overall City Stormwater Control System. The System provides proprietary drainage services to public and private property whose runoff has been allowed to enter the System through direct manmade connections as well as through overland flows. Portions of the System discharge to the South Fork Palouse River, Paradise Creek, and other associated Waters of the United States within Moscow. The majority of the System has been designated as a regulated Municipal Separate Storm Sewer System (MS4) by the US Environmental Protection Agency (EPA).

2. The City has been issued an MS4 Permit by the EPA which authorizes the City to discharge stormwater from the MS4 into Waters of the United States, as long as such discharges are in compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et seq., as amended by the Water Quality Act of 1987, P.L. 100-4, and as described by the MS4 Permit conditions and requirements. These conditions and requirements impose a regulatory cost associated with the City's provision of drainage services to its customers. Idaho is in the

process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.

3. The MS4 Permit imposes mandatory requirements on the City in order to legally discharge stormwater from the MS4 into Waters of the United States, including:

   a. Public Education and Outreach on Stormwater Impacts;

   b. MS4 Illicit Discharge Detection and Elimination;

   c. Construction Site Stormwater Runoff Control;

   d. Post-Construction Stormwater Management for New Development and Redevelopment Projects;

   e. Pollution Prevention/Good Housekeeping for City Operations;

   f. Stormwater Pollution Related Monitoring/Assessment Activities;

   g. Stormwater Pollutant Reduction Activities;

   h. Stormwater System Mapping and Planning;

   i. Keeping Stormwater Compliance Records; and

   j. Completing Stormwater Compliance Reports.

4. Failure by the City to comply with MS4 Permit requirements would subject the City to civil and criminal penalties under Federal Law which would place the City's resources and staff at financial, civil, and criminal risk and subject the City stormwater customers to additional financial and regulatory burdens.

C. Compliance with Idaho Statutes and Administrative Requirements for Discharging Stormwater to Groundwater

1. Portions of the City's Stormwater Control System receives stormwater leaving individual properties in the City, which is then deposited into a system of curbs, gutters, ditches, swales, detention basins, open spaces, and other appurtenances that dispose of the drainage. Most drainage is discharged to surface waters; however, some drainage may be disposed of by infiltration into the ground over deep and shallow aquifers. In addition, the City's MS4 permit requires the City to promote, where feasible, the use of on-site retention and infiltration of stormwater runoff for new development and redevelopment projects.

2. The Idaho Department of Environmental Quality (IDEQ) and Idaho Department of Water Resources (IDWR) regulate stormwater drainage over aquifers. Uncontrolled discharges from stormwater systems to groundwater can impact groundwater quality and protected beneficial uses.

3. Under IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, "Ground Water Quality Rule", activities with the potential to degrade aquifers shall be managed in a manner which maintains or improves existing ground water quality through the use of best management practices and best practical methods to the maximum extent practical, and no person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that (a) causes a groundwater quality standard to be exceeded; (b) injures a beneficial use of groundwater; or (c) is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method.

4. IDWR has also adopted Rules and Minimum Standards for the Construction and Use of Injection Wells (IDAPA 37.03.03), which regulates the use of drywells and other shallow injection systems used to dispose of stormwater below the ground surface. Use of a shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of surface or groundwater quality standards that would affect a beneficial use.

5. Failure by the City to comply with IDAPA 58.01.11, Rules of the Department of Environmental Quality, IDAPA 58.01.11, Ground Water Quality Rule and IDAPA 37.03.03, Rules and Minimum Standards for the Construction and Use of Injection Wells would subject the City to enforcement actions which would subject City stormwater customers to additional financial and regulatory burdens.

D. Compliance with Lewiston Independent School Dist. No. 1 v. City of Lewiston

1. The City of Lewiston's original stormwater fee was judged to be an unlawful tax rather than a lawful regulatory fee or user fee by the 2nd District Court, whose decision was upheld by the Idaho Supreme Court upon appeal. Lewiston Independent School Dist. No. 1 v. City of Lewiston, 151 Idaho 800, 264 P.3d 907 (2011).

2. Key factors cited by the Court that led to the decision overturning Lewiston's stormwater user fee included:

   a. The Court did not perceive that Lewiston's storm drains provided identifiable benefits and services to properties.

   b. The Court concluded that Lewiston's stormwater fee was not a fee for service but instead was "a revenue generating tax created to benefit the general public by charging all property owners for the privilege of using the City's preexisting stormwater system, regardless of whether they are using the stormwater system or not.".

   c. Lewiston's indication that a portion of stormwater fee revenue would be used to pay for some activities that were not entirely stormwater related, such as street maintenance and rebuilding.

d. The Court concluded that "the Stormwater Utility has an ad hoc structure" under which Lewiston made "ad hoc determination[s] as to what constituted...stormwater activities."

e. Lewiston charged fees to all owners of property with impervious surfaces with no exceptions for those "whose runoff does not enter the stormwater drain because they have their own stormwater systems or because their neighborhoods are not connected to the stormwater system".

f. The Court concluded that "it is unclear whether the Council has adopted a distinct Stormwater Utility structure separate from the Street Maintenance Department."

g. The Court concluded that fees charged for the stormwater utility did not qualify as regulatory fees under the police power, because the amount charged was not related to the cost of a regulatory or enforcement program.

h. The Court found that although the prior ordinance required that "all fees would be collected and separated from the general revenue," the actual practice was different. "In practice, stormwater fees are comingled with the City's general funds in the City's primary checking account.".

i. According to the Court, "the City did not proceed under the Revenue Bond Act".

3. To address the factors cited by the Court in Lewiston Independent School Dist. No. 1 v. City of Lewiston, the City of Moscow's ordinance and authorized stormwater user fee does the following:

a. Recognizes that, like potable water and sanitary sewer facilities, the City's Stormwater Control System serves a proprietary, rather than regulatory or governmental, function. Fees associated with the provision of stormwater service to property owners are user fees, not incidental regulatory fees.

b. Recognizes that the City's Stormwater Control System provided tangible benefits and services to property owners who use the System and consume System capacity and services. The array of stormwater benefits and services to customers are described in the City's Stormwater User Fee Basis, Rate Structure, and Policy Memorandum prepared by Aspect Consulting, 2019.

c. The user fee authorized by this ordinance is used to recover, on a pro-rata basis, the costs incurred by the City in providing stormwater drainage services including the cost of maintaining the System and complying with all applicable regulations. The system of stormwater user fee is not intended to generate revenues in excess of these costs.

d. Establishes a City Stormwater Department that, like the Water and Sewer Departments, is charged with (1) updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; (2) properly planning, operating,

maintaining, and constructing the Stormwater Control System; and (3) complying with all applicable stormwater regulations.

e. Only charges fees to properties actually receiving stormwater service, i.e., those discharging stormwater, whether directly or indirectly, to the City's Stormwater Control System.

f. Allows property owners to seek stormwater fee adjustments, or elimination of fees, through an application and appeal process to reflect their burden on, and services received from, the Stormwater Control System; including exemptions and refusal of service.

g. Prohibits using stormwater user fee revenue to pay for non-stormwater related City costs.

h. Places stormwater user fee revenue in a dedicated stormwater enterprise fund and prohibits co-mingling such revenues with the City's general fund.

i. Requires the City to adopt a detailed and transparent stormwater budget when setting stormwater fees and accounting for how stormwater fee revenue is spent.

j. Relies on authority contained within the Idaho Revenue Bond Act, and other sources of authority cited herein.

WHEREAS, based on the findings hereinabove, it is deemed by the Mayor and City Council to be in the best interest of the City of Moscow that the following amendments be adopted;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF MOSCOW, IDAHO, AS FOLLOWS:

SECTION 1. *That a new Chapter 19, entitled Stormwater User Fees is hereby added to Title 05 of the Moscow Municipal Code as follows*:

SEC.19-1. AUTHORIZATION.

This Chapter is enacted pursuant to the authority vested in the City by Article XII, Section 2 of the Idaho Constitution, the Idaho Revenue Bond Act (I.C. § 50-1027 - 50-1042) and Idaho Code Sections 50-301, 50-332, 50-333 and 63-1311.

Sec. 19-2. PURPOSE.

The purposes of this Chapter are:

To equitably allocate the operation, maintenance, improvement, and regulatory compliance expenses of the City's Stormwater Control System to users of the System in proportion to the level and type of services received from the System.

To provide for the establishment of a system of stormwater user fees and provide that the fees collected are set aside and designated solely for use for the maintenance, operations, improvements, regulatory requirements, and program costs of the City's Stormwater Control System.

To provide that all services mandated or authorized by this Chapter be furnished to customers at the lowest possible cost.

To establish standards and implement programs necessary and/or convenient to comply with the requirements of the City's MS4 Permit as well as the rules governing collection, treatment, detention and disposal of stormwater over the shallow and deep aquifers that underlie Moscow.

To establish a City Stormwater Department to operate and maintain the City's Stormwater Control System and to manage stormwater and drainage issues within the City.

Sec. 19-3. DEFINITIONS.

For purposes of this Chapter, the following terms and acronyms shall have the meaning herein set forth unless the text of the use of the term clearly requires otherwise:

Administrator or Stormwater Administrator. The person serving under the direction of the Deputy City Supervisor who is charged with supervising and overseeing the City's Stormwater Department, the Stormwater Control System, and the City's system of stormwater user fees.

Impervious Surface. Material which resists or blocks the passage of water into soils as would occur under natural conditions. Examples include but are not limited to, rooftops, roads, alleys, parking lots, sidewalks, patios, decks, and swimming pools.

MS4 Permit. The national pollutant discharge elimination system (NPDES) permit issued to the City by the Environmental Protection Agency in compliance with the provisions of the Clean Water Act, 33 USC section 1251 et seq., as amended by the Water Quality Act of 1987, PL 100-4, for stormwater discharges from small municipal separate storm sewer systems also known and referred to as an MS4 Permit. Idaho is in the process of assuming primacy for the Federal MS4 permitting program, after which the Idaho Department of Environmental Quality will assume regulatory responsibility from the EPA.

Stormwater Control System. The City-maintained system of ditches, channels, swales, culverts, basins, treatment systems, gutters, inlets, storm pipes, outfalls, ponds, creeks, river, wetlands, and any other appurtenances necessary, useful or convenient for the orderly collection, conveyance, treatment, and disposal of municipal stormwater runoff.

Stormwater Fund. A dedicated stormwater enterprise fund that is kept separate from the City's General Fund and solely used to cover stormwater costs, such as but not limited to: updating, administering, and enforcing the City's existing and future stormwater ordinances, standards, and codes; studying, planning, operating, maintaining, and constructing the Stormwater Control System; and complying with all applicable stormwater regulations.

Stormwater Review Board. A group of people chosen by the Deputy City Supervisor to review appeals of the Stormwater Administrator's user fee determination.

Stormwater User Fee. A reasonably individualized fee charged to property owners or tenants for stormwater services provided by the City Stormwater Control System.

Sec. 19-4. APPLICABILITY.

All property, within the corporate limits of the City, containing impervious surface that drains stormwater runoff into the City's Stormwater Control System is subject to this Chapter. Properties that are not subject to the Chapter are exempt from the Stormwater user fee created by this Chapter.

Sec. 19-5. STORMWATER DEPARTMENT CREATED.

A. Stormwater Department Created. There is hereby created and established a Stormwater Department for the City. The Stormwater Department will have regulatory authority and responsibility for planning, design, construction, maintenance, operation, and administration of the City's Stormwater Control System, and the services provided by the City's Stormwater Control System.

B. Stormwater Department's Regulatory Functions. The Stormwater Department is charged with administering and enforcing the City's existing stormwater ordinances, codes, and standards, as well as developing, administering, and enforcing future stormwater ordinances, codes, and standards necessary to comply with State and Federal regulations affecting the City's provision of stormwater services to customers within the City.

Sec. 19-6. STORMWATER DEPARTMENT ADMINISTRATION.

A. Stormwater Department Administration. The Stormwater Department shall be administered under the direction of the Deputy City Supervisor. The Stormwater Department will be administered in a manner similar to the City's existing Public Utilities.

B. Stormwater Administrator. The Stormwater Department, Stormwater Control System, and City system of stormwater user fees shall be under the supervision of the Stormwater Administrator who shall serve in such capacity under the direction of the Deputy City Supervisor.

C. Annual Reports. In order for the City Council to exercise its authority under I.C. § 50-1031, the Stormwater Department shall provide the Council with an annual report of the activities funded by stormwater user fees during the preceding year and a projection of the upcoming year's expenditures.

Sec. 19-7. POLICIES AND PROCEDURES.

The Administrator is authorized to establish and update, from time to time, written policies and procedures to implement the provisions of this Chapter.

Sec. 19-8. STORMWATER USER FEE.

A. Stormwater User Fee. The City may establish a system of periodic stormwater user fees that are proportionate to the costs of providing proprietary stormwater services to customers within the City in accordance with the costs of the operation and maintenance of the City's Stormwater Control System, including administration, planning, repair, improvement, regulatory compliance, and other stormwater costs, and for any redemption of bonds that are used to finance any system improvement.

B. Fee Established by Resolution. The fee authorized by this Chapter will be set by Resolution of the City Council.

C. Nature and Purpose of User Fee. The fees authorized by this Ordinance are not a one-time impact fee, capitalization fee, or buy-in fee. Rather, the fees will be charged to users on an ongoing, periodic basis. Revenue collected may be used for ongoing and recurring stormwater expenses, such as operations and maintenance, as well as capital expenditures and retirement of debt associated with capital expenditures.

D. Quantification of User Fee. The amount of a customer's stormwater user fee shall be based on the user's pro-rata share of the cost of service a City stormwater customer receives from the City Stormwater Control System. The fee shall be reasonably determined based on the volume of runoff from a customer's property (as reflected in the extent of impermeable surface) into the City Stormwater Control System. Impervious surface area is well correlated with urban runoff volume; therefore, the volume of runoff into the City Stormwater Control System will be based on the amount of impervious surface on a customer's property that drains into the City Stormwater Control System. In addition, to better individualize user fees, customers may provide information to the City under Subsections 'E' and 'I' of this Section regarding on-site factors that eliminate or reduce the volume of customer's runoff, or the pollution it contains.

E. System of User Fee Credits. The City shall provide a written system of user fee credits to better individualize fees to reflect a customer's stormwater burdens and services. The system of user fee credits will reasonably account for on-site practices or conditions that significantly (1) affect the expected volume and pollution of runoff flowing from a customer's property to the City Stormwater Control System; or (2) otherwise affect the cost for the City to manage and dispose of the customer's runoff. Some classes of stormwater customers may provide information to the Administrator and apply for applicable user fee credits. A decision regarding credit eligibility will be made by the Administrator within thirty (30) days of receiving a complete application. The burden of proof for initial and ongoing credit eligibility shall lie with the customer. The City may, at its discretion, charge

a credit application processing fee that reasonably reflects the administrative cost of reviewing and processing the application.

F. Exemption from User Fee. Properties that do not use the Stormwater Control System are exempt from the Stormwater User Fee because: (1) the property has no impermeable surface, (2) the property is served by its own stormwater system such that the property's stormwater runoff does not discharge to the City's Stormwater Control System, or (3) the property is directly and indirectly hydraulically disconnected from the City's Stormwater Control System. Customers may submit a request for an exemption under Subsections 'E' and 'I' of this section.

G. Periodic Revisions to Fee Calculation. The City shall periodically revisit the stormwater fee structure and rate and make adjustments as necessary to account for the most recent information on anticipated stormwater costs, debt obligations, revenue on hand, and anticipated fees and other revenue.

H. Customer Database. The City will use readily available information, such as aerial photographs or other data, to prepare a stormwater customer database containing calculations of impervious surface area on parcels within the City, along with parcel ownership. The City shall keep and maintain the customer database of impervious surface and fees over time. The City will recalculate a customer's impervious surface and fee, including reviewing whether the property is exempt, each time additional development occurs on the property that would significantly increase or decrease the amount of the fee. The recalculation of the fee will be triggered by an application for a building or site development permit.

I. Stormwater User Fee Corrections. The City shall provide a process for customers to submit information to the Administrator to adjust or eliminate their stormwater user fee. A customer who believes that their fee is based on an incorrect calculation of impervious surface, that the subject property does not receive any drainage services from the City Stormwater Control System (for the reasons described in Subsection F above), or otherwise has an incorrect fee, may submit a written recalculation request to the Administrator within thirty (30) days after the fee is established or adjusted. The request must identify the basis for disagreement with the user fee and be accompanied by relevant supporting documentation. The City shall determine whether the fee should be recalculated and, if so, recalculate the fee, and notify the requestor, in writing, no later than thirty (30) calendar days following receipt of the completed written request for recalculation.

J. Appeal of Stormwater User Fee Correction Decision. The Administrator's decision regarding user fee credits or correction of user fees, as allowed under Subsections 'E' and 'I' of this Section, may be appealed to the Stormwater Review Board by submitting a written appeal to the Administrator within thirty (30) calendar days after the Administrator issues its decision. The request must identify the error(s) committed by the City in recalculating the fee and any other basis for claim of incorrect calculation and be accompanied by relevant supporting documentation. The Stormwater Review Board will not hold a public hearing on the appeal but will meet and review all submitted information and make a determination on

the appeal. A final written decision from the Review Board will be issued no later than thirty (30) calendar days following receipt of the completed written request for recalculation unless the appellant agrees to an extension.

K. Refund of Overpayment. The City will refund any stormwater user fee overpayment, plus any statutory interest, within thirty (30) calendar days if either the Administrator or the Review Board determines that a user fee was improperly calculated as allowed by this Section.

Sec. 19-9. Billing and Enforcing Payment of Stormwater User Fees.

All billings for user fees charged under the provisions of this Chapter will be billed and collected in the same manner as the City's other Public Utilities as it relates to billing, payment, delinquency, and penalty provisions.

Sec. 19-10. STORMWATER FUND AND EXPENDITURES.

A. Segregation of Funds. All fees and charges received and collected under authority of this Chapter shall be deposited and credited to a special enterprise fund to be designated as the Stormwater Fund. All revenue accruing to the Stormwater Fund shall be maintained in a separate bank or financial account from, and shall not be co-mingled with, the City's general revenue fund.

B. Accounting of Receipts and Expenditures. The accounts of the Stormwater Fund created by this Section shall show all receipts and expenditures for the maintenance, construction, operation, upkeep and repair of the City's Stormwater Control System, including the payment of any System bonds issued by the City, which, from time to time, may be outstanding.

C. Other Revenue Sources. From time to time, the City, in its discretion, may deposit other monies into the Stormwater Fund to be used to cover stormwater costs, including, for example, revenue from grants, damages or penalties collected, or contributions of general revenue of the City.

D. Expenditure on System Expenses Only. All funds generated by this Chapter, as well as other deposits to the Stormwater Fund as provided in Subsection C, will only be expended on the operation, maintenance and other expenses, including regulatory compliance, of the Stormwater Control System. No general street maintenance, repairs, or improvements such as filling potholes, repaving, striping, winter sanding, removal of limbs and other large debris from streets, or other general fund expenditures may be charged to the Stormwater Fund; however, repair and replacement of curbs and gutters and removal of pollutants from the Stormwater Control System via sweeping or other methods is authorized in order to maintain the integrity of the Stormwater Control System and comply with applicable regulations. The Stormwater Administrator and the Finance Director are charged with adopting additional policies and guidelines to ensure that monies in the Stormwater Fund are only spent on valid drainage system expenses.

E. Availability of Deposited Funds. As provided by law, when budgeted and appropriated, the funds and credits to the account of the Stormwater Fund shall be available for the payment of maintenance, operation, repairs, and upkeep of the Stormwater Control System, compliance with the MS4 Permit, and to the extent legally available, for payment into a sinking fund established for the payment of the principal and interest of any general obligation system bonds which shall from time to time be outstanding.

F. Independence from the General Fund. The Stormwater Department shall operate independently of the City's general fund and shall have the same relationship to the City as the City's current Utility Programs. Upon creation of the Stormwater Department, the City's drainage facilities and assets, other than streets, shall be transferred to the Stormwater Department in accordance with Governmental Accounting Standards Board (GASB) Financial Reporting Principles.

SECTION 2. EFFECT ON OTHER ORDINANCES. *To the extent any provision of this Ordinance is inconsistent with any other City ordinance or resolution enacted prior to the date of this Ordinance, this Ordinance shall control.*

SECTION 3. ENFORCEMENT. *The adoption of this Ordinance shall not, in any manner, affect any prosecution for violation of any other ordinance committed prior to the effective date of this Ordinance or be construed as a waiver of any license or penalty due under any other ordinance, or in any manner affect the validity of any action heretofore taken by the City of Moscow City Council, or the validity of any such action to be taken upon matters pending before the City Council on the effective date of this Ordinance.*

SECTION 4. SEVERABILITY. *The provisions of this Ordinance shall be deemed severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair the validity of any of the remaining provisions, clauses, sentences, subsections, words or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word, or part, had not been included therein, and if such person or circumstance to which the Ordinance or part thereof is held inapplicable, had been specifically exempt therefrom.*

SECTION 5. EFFECTIVE DATE. *After its passage and adoption, a summary of this Ordinance, under the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Moscow, and upon such publication shall be in full force and effect.*

PASSED by the City Council and APPROVED by the Mayor this _____ day of _____, 2020.

_____
Bill Lambert, Mayor

ATTEST:

_____
Laurie M. Hopkins, City Clerk

DRAFT !!!!

UPDATED STORMWATER PROGRAM FUNDING ALTERNATIVES AND FINANCIAL PLAN

Moscow Stormwater Study

Prepared for: City of Moscow

Project No. 160473 • January 17, 2020

Aspect CONSULTING

earth + water

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Attachment 1 — City of Moscow Stormwater Capital Improvement Program

1 Purpose of Memorandum

The following financial plan supports the development and implementation of a regulatory compliance-based stormwater management program for the City of Moscow (City). The plan addresses each element of the City's stormwater management program, including stormwater regulatory compliance requirements, capital project needs, operation and maintenance of the stormwater system, and management functions. This financial plan has been updated to reflect:

- Measurement of impervious surface area (ISA) for a representative sample of residential properties within the City, estimating the City's stormwater billing unit or Equivalent Service Unit (ESU), and performing ISA measurements for select stormwater customer classes.
- Development of a stormwater user fee database with estimates of total raw ESUs and adjusted ESUs based on application of select credits, the results of which are presented in a separate Stormwater User Fee Billing Database Memorandum (Aspect, 2019).
- Feedback and direction received from City staff on the anticipated timing for enacting/adopting a stormwater user fee ordinance and roll-out of stormwater user fees.
- Minor budgetary adjustments to the stormwater and capital project budgets based on direction received from City staff and Council.

In early October 2018, the EPA notified the City of Moscow that it was proposing to issue individual MS4 permits instead of a general permit for regulated small MS4s in Idaho. The City of Moscow has since been issued a MS4 Permit which will require the implementation of a comprehensive stormwater management program. The MS4 Permit became effective on October 1, 2019 and expires on September 30, 2024.

It is important for the City to have adequate funding for the stormwater management program in order to address local stormwater needs and ensure compliance with the City's recently issued *National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Systems (MS4) Permit*. The permit, which was issued on August 5, 2019, became effective on October 1, 2019 and will expire on September 30, 2024.

Funding alternatives have been presented to illustrate various ways that the City's stormwater program can be financed and implemented. The recommended and City preferred primary funding approach relies on the collection of stormwater user fees to cover the construction, operation, maintenance, and management of the City's stormwater system, including stormwater regulatory compliance activities, capital projects, and equipment needs.

Approximate stormwater user fee rates have been estimated based on preferred stormwater user fee policy and rate structure options selected by the City, as well as a more-refined estimate of the total number of billing units or ESUs. These estimates are for illustrative purposes; ongoing efforts to implement stormwater user fees may affect the final rates approved by the City Council.

The financial plan developed for the City's stormwater management program consists of the following elements:

- Reviewing revenue needs to support the stormwater program, the results of which are presented in a separate *Stormwater Program Plan* (Aspect, 2019);
- Evaluation of current stormwater program funding mechanisms;
- Review of financial alternatives and potential funding mechanisms;
- Identification of recommended stormwater funding mechanisms;
- Identification of City-preferred stormwater funding mechanisms;
- Presentation of revenue needs and approximate stormwater user fee rates to support funding alternatives; and
- Financial management suggestions.

2 Revenue Needs

In order to define the programmatic and capital needs of the City's stormwater management program, a formal program assessment and gap analysis was completed. Through this process, information about the City's existing stormwater management program was compared to the various regulatory requirements and other established stormwater needs. The "gap" between what is currently being done and (a) what needs to be done to meet regulatory requirements, and (b) what is recommended to enhance other stormwater services and functions, was identified along with the approximate cost and timing necessary to fill gaps. In addition, funding necessary to address stormwater capital projects was estimated. A gap analysis matrix was created that presents:

A. The MS4 Permit requirements, along with City stormwater capital project and equipment needs;

B. The City's existing stormwater related activities, labor, and expenditures;

C. The new or increased activities necessary to ensure compliance and address City stormwater capital project and equipment needs; and

D. The estimated costs associated with continuing the existing program, addressing new requirements, and funding capital project and equipment needs.

The gap analysis and cost estimating process accounted for additional activities and resources that are necessary to administer and manage the stormwater program:

- Stormwater user fee system administration and management;
- Build-up of a reasonable operating reserve fund; and
- Stormwater development review functions and permit fees.

The gap analysis and funding analysis process involved consultation with City staff and included reviewing available City stormwater program and financial related documents.

Based on the gap analysis and initial funding analysis work completed, estimated annual costs for implementing the City's stormwater program over the five-year term of the MS4 Permit (2020 – 2024) were developed as summarized in Table 1. Much greater detail can be found in Appendix B of the *Stormwater Program Plan* (Aspect, 2019). The following information is included in the City's initial five-year program budget summary table:

- Estimated annual cost for each program area category and total annual program cost;
- Breakdown in revenue needed for the following major areas: (1) equipment; (2) capital projects; (3) staff, fees, overhead, and services; and (4) reserve fund build-up; and
- Breakdown in program costs to be covered by the following revenue sources: (1) funding from development permit fees and (2) funding from user fees or other sources.

More recently, City staff completed a review of several key project deliverables including: (a) estimated total annual program revenue needs; (b) staffing projections; (c) stormwater CIP projects, costs, and schedule; (d) refined estimates of total raw and adjusted billing units; and (e) estimated stormwater user fee rates. This provided an opportunity for City staff to consider potential affordability concerns and to provide direction to Aspect on realignment of programmatic and capital project budgets as needed to control rates, while still meeting key stormwater program needs. The following feedback and direction was received from City staff:

- A stormwater user fee ordinance will be enacted/adopted in late 2019.
- The adoption of stormwater rates and the collection of user fees will be deferred until October 2020 (start of Fiscal Year 2021 or Permit Year 2).
- The Street Fund will to continue to fund existing (baseline) program activities, such as street sweeping and storm system O&M functions, during Permit Year 1.
- The Street Fund will be used to address new requirements that start in Permit Year 1.
- Beginning in Permit Year 2, stormwater user fee revenue will be used to support the City's existing stormwater related activities, labor, and expenditures; fund new or increased activities necessary to ensure compliance; and address City stormwater capital project and equipment needs.

Based on consultation with City staff, rather than raise user fee rates for Permit Years 2 – 5 to still implement all planned compliance activities and CIP projects by the end of Permit Year 5, the five-year program budget shown in Table 1 was simply modified by shifting the total annual program costs out by one full year, as shown in Table 2. This results in shifting some planned first permit term costs into the first year of the second permit term (2025 – 2029), or Permit Year 6. Note that program costs shown for Permit Year 1 assume a minimal level of funding to address new requirements and no funding for major equipment purchases, capital projects, stormwater reserve fund build-up, or stormwater user fee system administration and management.

Table 1. Summary of Estimated Total Annual Program Revenue Needs and Sources

Program Area	Year 1	Year 2	Year 3	Year 4	Year 5
MS4 Permit Requirements	**$434,000**	**$527,000**	**$807,500**	**$757,000**	**$811,000**
Program Implementation and Permit Conditions	*$17,500*	*$12,500*	*$15,000*	*$15,000*	*$15,000*
Construction Site Runoff Control Program	*$52,000*	*$52,000*	*$116,000*	*$94,500*	*$104,500*
Stormwater Management for New Development / Redevelopment	*$51,500*	*$80,000*	*$161,500*	*$106,000*	*$116,000*
Stormwater Infrastructure and Management	*$194,000*	*$240,000*	*$369,000*	*$384,500*	*$414,500*
Illicit Discharge Management	*$45,000*	*$45,000*	*$48,000*	*$53,000*	*$59,000*
Education, Outreach, and Public Involvement	*$40,000*	*$25,000*	*$25,000*	*$25,000*	*$25,000*
Discharges to Impaired Waters and Monitoring	*$33,500*	*$52,000*	*$51,500*	*$56,000*	*$54,000*
Recordkeeping and Reporting	*$500*	*$20,500*	*$21,500*	*$23,000*	*$23,000*
Stormwater Program Equipment	**$398,500**	**$394,500**	**$89,000**	**$89,000**	**$89,000**
Stormwater Capital Project Fund	**$630,000**	**$980,000**	**$1,330,000**	**$880,000**	**$1,130,000**
Stormwater Program Funding	**$188,500**	**$203,000**	**$180,000**	**$192,000**	**$214,000**
Stormwater User Fee Administration Costs	*$95,000*	*$106,000*	*$117,000*	*$128,000*	*$139,000*
Stormwater Development Permit Fee Update Costs	*$18,500*	*$22,000*	*$13,000*	*$14,000*	*$25,000*
Stormwater Program Reserve Build-Up	*$75,000*	*$75,000*	*$50,000*	*$50,000*	*$50,000*
Annual Total	**$1,651,000**	**$2,104,500**	**$2,406,500**	**$1,918,000**	**$2,244,000**
Category of Revenue Needs					
Equipment	$398,500	$394,500	$89,000	$89,000	$89,000
Capital	$630,000	$980,000	$1,330,000	$880,000	$1,130,000
Staff, Fees, Overhead, Services	$547,500	$655,000	$937,500	$899,000	$975,000
Reserve, Operations	$75,000	$75,000	$50,000	$50,000	$50,000
Revenue Sources					
Funding from Stormwater Development Review Permit Fees	$108,500	$112,000	$183,000	$204,000	$225,000
Funding from User Fees / Other Sources	$1,542,500	$1,992,500	$2,223,500	$1,714,000	$2,019,000

Note: Cost provided above assume full recovery of development review costs.

Table 2. Revised Summary of Estimated Total Annual Program Revenue Needs and Sources

Program Area	Permit Term 1*					Permit Term 2
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
MS4 Permit Requirements	**$361,500**	**$368,000**	**$459,500**	**$738,500**	**$687,000**	**$739,000**
Program Implementation and Permit Conditions	*$17,500*	*$17,500*	*$12,500*	*$15,000*	*$15,000*	*$15,000*
Construction Site Runoff Control Program	*$52,000*	*$52,000*	*$52,000*	*$116,000*	*$94,500*	*$104,500*
Stormwater Management for New Develop / Redevelop	*$51,500*	*$51,500*	*$80,000*	*$161,500*	*$106,000*	*$116,000*
Stormwater Infrastructure and Management	*$182,500*	*$128,000*	*$172,500*	*$300,000*	*$314,500*	*$342,500*
Illicit Discharge Management	*$15,000*	*$45,000*	*$45,000*	*$48,000*	*$53,000*	*$59,000*
Education, Outreach, and Public Involvement	*$40,000*	*$40,000*	*$25,000*	*$25,000*	*$25,000*	*$25,000*
Discharges to Impaired Waters and Monitoring	*$2,500*	*$33,500*	*$52,000*	*$51,500*	*$56,000*	*$54,000*
Recordkeeping and Reporting	*$500*	*$500*	*$20,500*	*$21,500*	*$23,000*	*$23,000*
Stormwater Program Equipment	**$15,000**	**$521,000**	**$272,000**	**$89,000**	**$89,000**	**$89,000**
Stormwater Capital Project Fund	**$0**	**$530,000**	**$680,000**	**$680,000**	**$680,000**	**$680,000**
Stormwater Program Funding	**$5,000**	**$173,500**	**$187,000**	**$163,000**	**$174,000**	**$195,000**
Stormwater User Fee Administration Costs	*$0*	*$80,000*	*$90,000*	*$100,000*	*$110,000*	*$120,000*
Stormwater Development Permit Fee Update Costs	*$5,000*	*$18,500*	*$22,000*	*$13,000*	*$14,000*	*$25,000*
Stormwater Program Reserve Build-Up	*$0*	*$75,000*	*$75,000*	*$50,000*	*$50,000*	*$50,000*
Annual Total	**$381,500**	**$1,592,500**	**$1,598,500**	**$1,670,500**	**$1,630,000**	**$1,703,000**
Category of Revenue Needs						
Equipment	$15,000	$521,000	$272,000	$89,000	$89,000	$89,000
Capital	$0	$530,000	$680,000	$680,000	$680,000	$680,000
Staff, Fees, Overhead, Services	$366,500	$466,500	$571,500	$851,500	$811,000	$884,000
Reserve, Operations	$0	$75,000	$75,000	$50,000	$50,000	$50,000
Revenue Sources						
Funding from Stormwater Development Review Permit Fees	$105,000	$108,500	$112,000	$183,000	$204,000	$225,000
Funding from User Fees / Other Sources	$276,500**	$1,484,000	$1,486,500	$1,487,500	$1,426,000	$1,478,000

Notes: *Full compliance required by end of Permit Year 5. **Assumes no user fee revenue in Permit Year 1. Costs provided above assume full recovery of development review costs.

Note that the Stormwater Capital Improvement Plan (CIP) budget shown in Table 2 for Permit Year 2 is the CIP budget originally intended to cover CIPs planned for Permit Year 1. Similarly, the CIP budget shown in Table 2 for Permit Year 3 is the CIP budget originally intended to cover CIPs planned for Permit Year 2. This CIP shift occurs for all years; therefore, the stormwater CIP has been revised not only to reflect the one-year delay in schedule but also a shifting of some capital projects into later years of the CIP, as directed by City staff. The revised stormwater CIP is provided as Attachment 1 and supersedes the stormwater CIP included as Appendix C of the *Stormwater Program Plan* (Aspect, 2019).

Based on the revised program budget shown in Table 2, the total annual revenue needed for the City's enhanced stormwater management program, at the end of the first five-year term of the MS4 Permit (Permit Year 5), is estimated at:

- For **operations**: $861K [$687K in MS4 Permit costs plus $174K in Stormwater Program Funding costs ($110K user fee administration, $14K for Development Fee Update costs, $50K for Stormwater Program Reserve Fund build-up)];
- For stormwater **capital projects**: $680K [represents total estimated cost for projects included in Year 4 of the City's Stormwater CIP (see Attachment 1)]; and
- For stormwater **equipment**: $89K [represents reimbursement to Streets Equipment Repair and Replacement (ER&R) Fund of $79K in Year 5 per the City's Stormwater CIP, plus an additional annual set-aside of $10K for repair/replacement of field and office equipment and for new staff].

The operations estimate includes approximately 6.4 additional full time equivalent (FTE) staff in the stormwater program, including 1.0 FTE for stormwater program planning, administration, and management; 3.6 FTE for stormwater operations and maintenance; 1.3 FTE for development review functions; and 0.50 FTE for financial and clerical support. See the *Stormwater Program Plan* for additional detail regarding the City's program assessment and needs.

The estimated total maximum annual stormwater program cost occurs in Permit Year 4 and is approximately $1,671K. Permit Year 4 costs are assumed to be funded by (a) $1,488K in revenue from City stormwater user fees/other sources; and (b) $183K in revenue from City stormwater development review and permitting fees. This assumes that the City takes a primarily "pay-as-you-go" approach to capital projects and equipment rather than financing them over a longer term. The "pay-as-you-go" CIP approach requires the City to begin raising approximately $643K in average annual capital project funding and an additional $243K in average annual stormwater equipment reimbursement funding. Stormwater related equipment reimbursement funding levels begin high in Permit Year 2 and 3, with an average of approximately $397K, but decrease to approximately $90K for the remaining two years of the first permit term. The annual allocation for stormwater capital project funding is fairly significant, but reasonable considering the projected cost and schedule for proposed stormwater capital projects identified by the City and included in the revised Stormwater CIP developed by the City (Attachment 1). Annual stormwater operational costs (MS4 Permit Requirements + Stormwater Program Funding costs) begin at a relatively low level in Permit Year 1 and gradually increase over the remaining years of the first MS4 Permit term.

3 Evaluation of Current Funding Mechanisms

The City uses few revenue sources and funding mechanisms to operate its existing stormwater program. The existing program primarily consists of:

- Emergency response to flooding events;
- Response to drainage complaints;
- Application of existing City stormwater development standards;
- Application of existing City construction site erosion and sediment control standards;
- Stormwater development review and construction site inspection functions;
- Requiring proper O&M of private stormwater detention and/or treatment system;
- Periodically inspecting and cleaning catch basins, manholes, pipes, ditches, and culverts;
- Repairing or replacing broken or blocked pipes and ditches;
- Constructing new or upgraded stormwater systems to accommodate new development and/or new roads;
- Sweeping streets to reduce stormwater pollution;
- Acquiring and caring for stormwater O&M equipment;
- Disposing of materials removed from the stormwater system;
- Inventorying and mapping the stormwater system;
- Distribution of stormwater educational materials;
- Participating in clean-up planning for impaired water bodies;
- Tracking and commenting on EPA's Draft MS4 Permits; and
- Many other activities such as training City staff, conducting outfall inspections, updating storm system maps, updating standards, holding public open houses, managing stormwater design projects, and keeping records.

Expenses for existing stormwater related activities are currently covered by general fund revenues (derived from property tax levy; state sales tax; plan review fees; utility franchise, licensing, and permit fees; and other minor revenue sources); special revenue funds, specifically the Street Fund (revenue derived from highway user tax and road and bridge tax); and City enterprise funds, including Water and Sewer.

Based on available expenditure information for 2015-16, the City spends approximately $90K on street sweeping, storm system operation and maintenance, flood control functions, and an unspecified amount on stormwater related development review functions. Based on the program gap analysis conducted, the amount of existing funding will not allow for recommended staffing levels and is not sufficient to fully address regulatory requirements or established capital project and equipment needs. Therefore, new funding will be needed. Based on input from City staff, the preferred approach is to form a dedicated system of stormwater user fees to fund the bulk of the City's stormwater management program, supplemented by development permitting, plan review, and inspection fees.

4 Financial Alternatives and Potential Funding Mechanisms

4.1 Description of Potential Revenue Options

To create the level of revenue needed to support the City's existing and future stormwater program, several funding options/mechanisms have been considered, ranging from stormwater user fees to establishing long-term inter-local cost sharing agreements.

For most municipal agencies, the array of stormwater activities usually requires a diversity of both short-term and long-term revenue sources. The most common revenue sources used by municipal agencies to create a secure and adequate level of annual funding for regulatory driven stormwater programs are:

- Stormwater user fees; and
- Stormwater development service/permit fees.

Other funding mechanisms that the City should consider include:

- Grants & loans;
- Revenue bonds;
- Fee in lieu of onsite detention;
- General Facility Charges (GFCs) or System Development Charges (SDCs); and
- Future coordination and cost sharing with other agencies.

Each of these funding mechanisms is briefly described on the following pages.

4.1.1 Stormwater User Fees

Numerous counties, cities, and special purpose districts across the nation have developed and implemented stormwater user fees to address the bulk of the financial needs of their stormwater programs (along with development fees to cover permitting, plan review, and construction site inspection). Establishing stormwater user fees is the most reliable and fair means of financing stormwater programs, particularly as additional water quality and regulatory compliance costs arise. This approach recognizes that the operation of stormwater drainage infrastructure, including related regulatory compliance efforts, is a proprietary service and, like water and sewer, needs to be paid for by those who access the stormwater system and use services.

Since the volume of stormwater runoff is directly affected by the creation of impervious surfaces, stormwater user fees are commonly based on the amount of impervious surface area on a customer's parcel. Stormwater user fees are often billed monthly with utility bills or semi-annually along with property tax statements. Stormwater user fees may be used to fund stormwater program operations, equipment, and projects; however, sometimes "area/basin specific" fees are implemented when large capital projects benefit customers in one drainage area more than those in another area, or where differences in system operation and maintenance costs differ significantly between service areas (as is

the case with the City of Coeur d'Alene). In addition, stormwater user fees should not be used to subsidize construction site stormwater permitting, development review, and inspection program costs.

Most municipal agencies rely on stormwater user fees because the amount of revenue available from other funding sources is too limited or sporadic to fund the needs of a comprehensive regulatory compliant stormwater management program.

4.1.2 Development Service/Permit Fees

Development service/permit fees are fees charged to property owners and developers for City development permit review functions (stormwater site plan review and technical assistance) and stormwater related construction site inspections and enforcement efforts. The stormwater review fee is often a component of a larger overall development permit fee. Service fees should be established based on a cost of service analysis and should attempt to recover the full costs of stormwater development review functions (including training and equipment for plan reviewers, inspectors, and enforcement staff). The City's development review related services should be fully funded by development permit fees paid by those responsible for the development activity.

4.1.3 Other Funding and Financing Mechanisms

User fee based stormwater management programs often have adequate annual revenues and fiscal standing to take advantage of long-term capital project financing options, including bonding for capital needs, loans for special projects, and partnering for cost sharing with other entities and/or developers. Occasionally, opportunities arise that allow an agency to take advantage of additional outside funding sources, including grants and establishing project specific Local Improvement Districts (LIDs). These revenue sources, once established, can augment annual stormwater program revenues for specific purposes, but would be inadequate as a primary source of dedicated funding for an entire stormwater program. Other funding mechanisms that the City should consider in the future include:

Grants

The State's Nonpoint Source Management Section 319 Subgrants program is available for projects that focus on improving water quality by addressing a variety of nonpoint source management and prevention activities in the areas of agriculture, urban stormwater runoff, hydrologic and habitat modifications, and related activities. The majority of the Section 319 funds are passed down to the local level for on-the-ground TMDL implementation projects. Grants are awarded annually on a competitive basis.

FEMA currently administers three programs that provide funding for hazard mitigation projects and planning. One such program includes the Flood Mitigation Assistance (FMA) Program, authorized by Section 1366 of the National Flood Insurance Act of 1968, which is charged with reducing or eliminating claims under the National Flood Insurance Program (NFIP). FMA provides funding to local communities for projects and planning that reduces or eliminates long-term risk of flood damage to structures insured under the NFIP. Funding is appropriated by Congress annually. This could be a good source of funding for identified flood hazard reduction projects.

Loans

The Idaho Water Resource Board is authorized to award loans for the financing of water projects, including drainage projects. The term of these loans can range from 5 to 30 years, depending on the amount borrowed, project scope, fiscal standing, and planned repayment period. Loans are a good funding source for non "pay-as-you-go" projects once stable sources of annual revenues are established to ensure that payment terms can be met. Loans can also help spread capital costs over longer timeframes, thereby avoiding possible spikes in user fee revenue needs and associated rates.

Revenue Bonds

Bonding is typically difficult for most stormwater programs until a healthy fiscal standing is attained. Bonding is also normally limited to capital projects that have already been designed and permitted. However, bonds can be a very useful funding mechanism for capital projects if the stormwater user fee rates enacted are high enough to establish a reserve fund and financial stability.

Long-term financing options that utilize bonding can contribute a substantial amount to the annual needs of a stormwater management program. These types of revenue sources can address a significant portion of the capital project costs, depending on the annual user fee rates, the financial stability of a stormwater enterprise fund, and the financial rating and bonding capacity of the municipal agency. Like loans, bond financing helps prevent fluctuating user fees that may occur when using a "pay-as-you-go" approach for capital projects. It is important for a stormwater program to have a reasonable operating reserve fund in order to demonstrate solvency and obtain an adequate bond rating. User fee rates must be high enough to allow revenue bonds to be issued for capital projects and there is always an annual payment to service the bond debt.

Fee in Lieu of Onsite Treatment and/or Detention

One possible option for the City to consider is the establishment of a stormwater facility funding program where the developer pays a fee to the City in lieu of constructing onsite treatment and/or detention. This could be appropriate in areas of the City where construction of onsite retention systems is difficult but regional facilities are feasible and conveyances from development sites to the regional facility are available or can be constructed. The City would accept flows into City-operated conveyance and regional detention and/or treatment facilities. The amount of the fee would generally be equal to the projected cost for the developer to provide onsite treatment and/or flow control facilities. This option is usually used by jurisdictions that want to attract and facilitate new development by simplifying onsite stormwater requirements. The jurisdiction usually "fronts" the funds necessary to construct the facility in advance of the development, and then charges new development the "in-lieu of fee" to pay back the costs. This approach must be carefully planned out to ensure that the City has a high certainty of being paid back within an acceptable timeframe.

General Facility Charges (GFCs) or System Development Charges (SDCs)

GFCs/SDCs are paid by new developments to reimburse the local government for the cost of constructing additional capacity to downstream drainage facilities. SDCs are often based on impervious area, which is often used as a measure of runoff amount and impact on the drainage system. The amount of revenue raised by GFCs/SDCs is dependent on the amount and type of development that occurs within the City on an annual basis. This revenue source can vary from year-to-year depending on the local economy and building opportunities. While not recommended at this time for the City, these options should be kept in mind for basins where significant development can still occur and where downstream public stormwater infrastructure upgrades will be needed to accommodate that growth.

Special Purpose Districts

Special purpose districts can be an equitable approach to generate revenue for local and regional projects. The major advantages of this funding mechanism are that: (1) they can be set up to cross jurisdictional boundaries in order to follow basin and/or watershed boundaries; (2) they foster partnering with landowners and future developers and/or other agencies; (3) they are equitable; and (4) they have many of the same authorities for land acquisition, condemnation, right-of-way, and fund raising that cities and counties have. The formation of some districts requires a majority vote of the existing property owners, and as such is often difficult to get initially established. In addition, some special districts are controlled by a private board of supervisors and operate outside the control of a city or county.

Future Coordination Opportunities with Other Agencies

The City should look for opportunities to collaborate with neighboring jurisdictions and agencies such as University of Idaho and the Idaho Department of Transportation on stormwater work in order to: (1) promote efficiency and save money; (2) obtain fair solutions to problems that cross political boundaries; and (3) promote consistency of standards and practices throughout the region. The City should continue coordinating with entities such as local volunteer groups; local college, state, and federal agencies; and other local governments. The City should continue its discussions with its neighboring jurisdictions to identify and implement cooperative activities to collectively meet each jurisdiction's stormwater regulatory requirements. The City should also continue to participate in state-wide and regional coordination activities, including work through the Association of Idaho Cities.

5 Proposed Stormwater Funding Mechanisms

Based on the above review and analysis of various financial alternatives and revenue generating mechanisms, and direction provided by City staff, the following sources of revenue are proposed for near-term implementation by the City:

- Enacting a City-wide system of user fees collected on a monthly basis with revenue deposited in a stormwater enterprise fund;

- Reviewing and updating City development service/permit fees to account for and recover stormwater realted permitting, plan review, and construction inspection costs; and
- Continue using the Street Fund to help pay for stormwater management activities that overlap with street management activities during the transition to stormwater user fees.

The formation of a dedicated system of stormwater user fees is proposed to provide the primary source of funding for the operation of the City's stormwater management program, including capital projects, while development service/permit fees will serve as an additional source of funding to cover stormwater related development permitting and review functions. Development service/permit fees should fully fund the City's stormwater development review and inspection functions. It is recommended that the City review current development related plan review and inspection costs, estimate future cost of services, and update permit fees as needed to cover the cost of stormwater related development review functions.

It is recommended that the City continue some level of funding from the City Street Fund to cover a portion of the required stormwater activities during the transition to stormwater user fees, specifically those that overlap with street management activities. The current plan calls for existing (baseline) program activities, such as street sweeping and storm system O&M functions, to continue to be funded from the Street Fund during Permit Year 1. The City is planning to begin collecting stormwater user fee revenue in Permit Year 2. Stormwater user fee revenue will: (a) support the City's existing stormwater related activities, labor, and expenditures; (b) fund new or increased activities necessary to ensure compliance; and (c) address City stormwater capital project and equipment needs. If the allocation from the Street Fund were to continue beyond Permit Year 1, then stormwater user fees would be proportionally lower. However, if stormwater user fees become the dominant source of revenue to support the City's stormwater program it would allow the diverted Street Funds to be allocated to important City transportation projects and priorities.

A preceding review of the City's program, equipment, capital, and regulatory compliance requirements indicates that the City will need approximately $1,918K per year at the end of the first five-year Permit term to fund its overall stormwater management program. This is an increase of about 1,828K per year over estimated current levels of stormwater funding. Since the City has not had a dedicated stormwater activity or cost tracking system, only $90K of stormwater related expenditures were accounted for during the planning process. However, it is likely that significantly more untracked stormwater costs were actually incurred by the City. To achieve the necessary level of funding, approximately $1,714K would be provided by stormwater user fees, with development service/permit fees providing an additional approximately $204K. Annual revenue from stormwater user fees would be used cover stormwater system O&M, including regulatory compliance ($949K), and to fund capital projects ($880K) and stormwater equipment purchases ($89K).

In addition to the proposed stormwater funding approach discussed above, the City should also consider other long-term revenue sources, including bonding for capital projects, grants/loans, and additional cost sharing opportunities with other agencies.

These additional revenue sources should be pursued as suitable conditions arise and could spread capital costs over a longer period, thereby reducing and/or preventing short-term spikes/fluctuations in projected stormwater user fee rates.

6 Recommended Approximate Stormwater User Fee Rates

6.1 Introduction to Stormwater User Fee Rate Estimation Process

The objective of this section is to estimate stormwater user fee rates necessary to implement the City's stormwater program. While stormwater rates vary substantially across jurisdictions, it is reasonable to expect Moscow's rate to be on par with that of similar communities with similar regulatory requirements and programs. In order to determine approximate stormwater user fee rates, it is necessary to have a reasonable estimate of:

- **Annual stormwater revenue requirements** – how much will be spent in each year on regulatory compliance, operation and maintenance, equipment costs, capital projects costs (debt service or "pay-as-you-go"), reserve fund build-up, and miscellaneous external services (legal support, accounting, etc.).
- **Non-user fee annual stormwater revenue sources** – how much money, if any, can you count on being provided to the stormwater program each year through mechanisms such as general tax funds, street funds, grant funds, and development service/permit fees.
- **Stormwater customer account information** – how many customers of different types exist, what will the billing unit be (e.g., Equivalent Service Unit or ESU), how many billing units are created, what are the expected stormwater user fee policies (rate structure, credits, waivers, etc.), what is the expected growth in the number of customers and billing units over time.

Once these items are estimated or identified, it is fairly straight forward to estimate annual stormwater user fee rates, as well as the charge for a given property within a customer class. For this section we will use the recently revised estimates of total billing units (ESUs) along with City and consultant recommended stormwater user fee rate structure and policies in order to provide updated and more accurate estimates of stormwater user fee rates.

6.2 Review of Stormwater Program Revenue Needs

The first step undertaken in this process was to review the City's revenue requirements. As discussed previously, a stormwater program assessment and gap analysis was completed that resulted in initial detailed cost estimates for compliance activities, equipment, and capital projects (see Table 1). Minor budgetary adjustments were subsequently made to the stormwater and capital project budgets based on direction received from City staff regarding the anticipated timing for enacting/adopting a

stormwater user fee ordinance and roll-out of stormwater user fees. A revised estimate of the total annual revenue needs for implementing the City's program over the first five-year permit term (Permit Years 1 – 5) and the first year of the second permit term (Permit Year 6) is shown above in Table 2. The projected revenue needs shown in Table 2 covers all stormwater program recommendations developed during the gap analysis and needs assessment process, while also taking into consideration direction and feedback received from City staff and Council.

With the total estimated annual stormwater program revenue requirements provided in Table 2, it is possible to estimate approximate stormwater user fee rates as well as fees for various customers. However, before an estimate of stormwater user fee rates is developed, it is necessary to mention some of the issues that must be addressed in the process of implementing a system of stormwater user fees.

6.3 Issues to Address When Setting Stormwater User Fee Rates

There are a number of background issues and decisions that should be considered in the development and implementation of a system of stormwater user fees. These generally include the following:

- Determine user fee policies (e.g. credits, exemptions, and waivers; appeal procedures; enforcement of payment; etc.);
- Determine rate structure (i.e., how fees applied to customer classes);
- Determine the billing unit (e.g., Equivalent Service Unit or ESU);
- Determine how fees will be collected (e.g., monthly vs. annual billings);
- Establish a customer account database;
- Determine condition of storm drain infrastructure;
- Establish sound factual basis for fees (e.g., burdens, services, science); and
- Educate the public and key stakeholders.

Each of these key items is briefly described in the sections that follow. It should be noted that work has been completed on several of these key items. For example, Aspect has developed and presented stormwater rate structure options and policy issues to City staff during a *Stormwater Rate Structure and Policies Work Session* held in July 2017. The rate structure options and policy issues covered, and feedback received from City staff, are provided in Appendix C and E, respectively, of the *Stormwater Fee Basis, Rate Structure, and Policy Memorandum* (Aspect, 2019). The outcome of the work session includes a set of consultant and City staff policy recommendations for the City Council to consider as the user fee development process continues.

In addition, a full draft stormwater user fee ordinance has been developed in consultation with City staff and the City attorney. The stormwater user fee ordinance will be presented to City Council for review and adoption during a planned public hearing likely to occur in late 2019.

Furthermore:

- Impervious surface area (ISA) measurements have been performed for a representative sample of residential properties within the City and used to estimate the City's stormwater billing unit or ESU.
- Residential customers have been placed in tiers using remote sensing data to estimate single family residential (SFR) parcel specific ISA.
- ISA measurements have been performed for select non-SFR stormwater customer classes within the City to estimate total raw ESUs at the parcel-level scale.
- Where parcel specific ISA measurements were not made, ESUs have been assigned to customers based on representative samples of ISA, establishment of reasonable relationships between ISA and other customer parcel characteristics, and selected rate structure options and policies.

Collectively, this billing information has been incorporated into a stormwater user fee database with estimates of total raw ESUs and adjusted ESUs based on application of select credits, the results of which are presented in a separate *Stormwater User Fee Billing Database Memorandum* (Aspect, 2019).

6.3.1 Determine User Fee Policies and Rate Structure

The City Council should be consulted concerning how they want to set user fee policies that govern the rate structure. User fee policies relate to considerations such as: (1) are non-profits, disabled, senior, and low-income property owners charged at the same rate as others?; (2) should property owners who utilize on-site retention/treatment be given a credit towards their fee?; (3) should fees be based only on impervious surface or should land use also affect rates?; (4) should the rate structure differentiate between water-quality and water-quantity related costs?; (5) should City streets be waived or charged at the same rate as other property owners?; (6) should state highways be waived?; (7) should owners of larger homes (with larger impervious surface) pay more than owners of a small home?; etc. Remember, the more discounts, credits, and waivers given out, the higher the rates will be for those remaining properties that pay user fees. Also, the more the rate structure attempts to account for the many possible variables, the more complex and time consuming it will be to administer. City staff have worked with Aspect to select a rate structure and initial set of policies which are presented in the *Stormwater Fee Basis, Rate Structure, and Policy Memorandum* (Aspect, 2019)

6.3.2 Determine the Billing Unit

Normally this is called an "Equivalent Service Unit" (ESU) and is set about equal to the average amount of impervious surface on single family residential properties within a jurisdiction's stormwater service area. This is often determined based on GIS measurements using aerial photographs and parcel boundary information. Non-residential properties usually have their impervious surface measured (using GIS) and their user fee set based on the number of ESUs they have. For instance, if the ESU is 3,000 square feet, and a commercial property has 30,000 square feet of impervious surface on it, their charge would be for 10 ESUs or about 10 times that of an average single-family home owner.

Current aerial photography and ESRI ArcMap GIS tools were used to outline and measure the impervious surface on a randomly selected sample of 250 single family residential (SFR) properties within the City. Based on the measurements, the average amount of ISA on single family residential parcels is approximately 3,340 square feet, while the median and geometric mean were calculated to be 3,054 and 3,113 square feet, respectively. City staff approved Aspect's initial recommendation that Moscow's ESU be defined as 3,340 square feet of ISA. The results of this analysis are presented in a separate *Stormwater User Fee Billing Database Memorandum* (Aspect, 2019).

6.3.3 Determine How Fees Will Be Collected

Cities often have two choices for billing and collecting fees: (1) monthly billings, similar to water and/or sewer bills; or (2) arrange (pay) for the County Treasurer to send bills annually or semi-annually with property tax statements (commonly done for special purpose districts). Which method is chosen has important implications for things like cash flow, enforcement mechanisms, public relations, and administration costs. Based on City staff direction, stormwater user fees will be collected on a monthly basis along with water and sewer bills.

6.3.4 Establish a Customer Account Database

It is necessary to set-up a customer account database to track account status. In addition, it is necessary to set-up a system to track parcel ownership, development that results in changes to the land use, annexations, and so on. The City may already have much of this done depending on the status of water and/or sewer service billing systems. The database can be time consuming to set-up, particularly when it is necessary to measure impervious surfaces for non-residential (e.g., commercial and industrial) and/or residential properties.

Aspect worked with City staff to select recommended groupings of stormwater user fee customer classes based on the selected rate structure and initial set of policies. For those customer classes requiring an ISA measurement, current aerial photography and ESRI ArcMap GIS tools were used to outline and measure impervious surface on each property. A preliminary stormwater user fee billing database was developed utilizing a City-provided GIS parcel file and the GIS-based ISA measurements. Estimates of total raw ESUs and adjusted ESUs were developed based on application of select credits. City staff directed Aspect to complete necessary work to support the integration of the preliminary stormwater user fee billing database into the City's existing water/sewer utility billing system. The above work was presented in a separate Stormwater User Fee Billing Database Memorandum (Aspect, 2019).

6.3.5 Establish Sound Factual Basis for Fees (Burdens, Services, Science)

Develop a written document that clearly demonstrates that the City conducted appropriate "due diligence" when deciding to enact stormwater user fees. This is important to have if the system of user fees is challenged by any customers. It is not uncommon to have legal challenges to stormwater fees; therefore, it is prudent to be prepared to successfully defend the user fee system by ensuring that due diligence was performed, and that the enacting ordinance considers and addresses the most recent legal decisions. Due diligence involves discussing the types of "burdens" (runoff and/or pollution) imposed by classes of customers (land uses) on the City stormwater system, the services provided by the City

stormwater system to each class of customer (public education, surface water-quality protection, pollution management, conveyance, safety, etc.), and how these directly relate to the rate structure and user fees. This is also where credits and waivers should be justified. Referring to established science and engineering practice is an important part of conducting due diligence. This was done in collaboration with City staff and is presented in the *Stormwater Fee Basis, Rate Structure, and Policy Memorandum* (Aspect, 2019).

6.3.6 Educate the Public and Involve Key Stakeholders

Educating the public and involving key stakeholders early in the process of establishing a system of stormwater user fees can decrease the odds of a legal challenge, as well as decrease the magnitude of the inevitable outcry that will occur when the first bills are received by property owners. Be prepared to answer hard questions. Develop and distribute fact sheets and other materials that discuss the need for stormwater user fees and the services and benefits that are provided. Sometimes it is wise to meet one-on-one in advance with top fee payers. Involving special interest groups can be important as well but can also serve to delay the process as it is not uncommon for them to directly lobby policy makers and challenge the need for fees. It is important to discuss public, stakeholder, and special interest group involvement and likely responses with the policy makers and develop a strategy for success. Communication (documented) of key points and issues is very important.

Given that the City is currently under an MS4 Permit, remaining efforts to implement stormwater user fees should continue forward to ensure that the annual financial needs of the stormwater program, including permit compliance obligations, are met.

6.4 Estimating Stormwater User Fee Rates

Given the revenue needs, recommended user fee policies and system of charges, and estimate of total billing units, the final step of the process is to translate the financial plan into stormwater user fee rates.

For this analysis, the following assumptions have been made:

- The total raw number of stormwater billing units is currently estimated at 14,235.
- The total adjusted number of stormwater billing units is reduced to 13,148 by: (a) application of the Direct Discharge Credit for parcels within select customer classes that meet eligibility criteria for a reduction in their total billing units; (b) additional reduction up to 2.5 percent to account for additional credits and waivers allowed by the City; (c) application of the NPDES Permit Credit (20%) for properties owned by the University of Idaho; and (d) additional reduction up to 1.5 percent to account for potential non-payment of stormwater user fees.
- Development permit fee revenue is excluded for the purpose of estimating approximate rates. Rates may need to be increased if funding is not provided from increased development service/permit fees or other City funds. The use of stormwater user fees to subsidize development review, site inspection, and enforcement costs should be avoided. Therefore, it will be important for the City to track development review costs and adjust permit fees accordingly.

Approximate annual stormwater rates are presented in Table 3 assuming the revenue needs and distributions associated with the City's revised five-year program budget, and starting in Permit Year 2, as presented in Table 2 (see costs shown for "Funding from User Fees/Other Sources").

Table 3. Estimated Stormwater User Fee Rates

Rate Class	Stormwater User Fee Rates ($/ESU per Month)						
	Permit Year 1*	Permit Year 2	Permit Year 3	Permit Year 4	Permit Year 5	Permit Year 6	5-Year Avg
Estimated Rates	---	$9.41	$9.42	$9.43	$9.04	$9.37	$9.33
Example Monthly Rates ($ per Month)							
Single Family Residential, Avg ISA	---	$9.41	$9.42	$9.43	$9.04	$9.37	$9.33
Tri-Plex	---	$14.11	$14.13	$14.14	$13.56	$14.05	$14.00
Commercial Property w/10 ESUs	---	$94.1	$94.2	$94.3	$90.4	$93.7	$93.3
Industrial Property w/100 ESUs	---	$941	$942	$943	$904	$937	$933
City of Moscow Facility w/50 ESUs	---	$470	$471	$471	$452	$468	$467

* Stormwater user fees not collected in Permit Year 1.

Note that the accuracy of these estimated rates depends directly on the validity of the assumptions used. Differences in the actual number of City billing units (and more precisely the number of customers in each rate/charge category), chosen and applied stormwater policies and rate structure, and actual on-the-ground program costs can have an impact on fee amounts. However, based on work completed to date, the above estimates provide a solid foundation from which the City can make important decisions before undertaking the work necessary to actually adopt and implement a system of user fees.

The preliminary rates are reasonable when compared to rates of other jurisdictions with comprehensive regulatory driven stormwater programs, including NPDES Phase II jurisdictions in Washington. Monthly rates for such programs are often well over $6.00 per billing unit, with it becoming more common to see monthly rates around $15.00 per billing unit. For example, the City of Pullman's currently monthly rate is $7.00 per billing unit, while the City of Walla Walla's monthly rate is $12.60 per billing unit. Walla Walla's program has a larger capital project component than Pullman's.

If the City chooses to formally compare proposed user fee rates with those used in other communities, it is important that a reasonable comparison be made. Some Cities have very large commercial areas and relatively small residential areas; or do not have much aging infrastructure, which results in few capital project needs. Some communities subsidize their stormwater program using other funds, or may excel at acquiring grants. Stormwater rates in these types of communities tend to be lower. In addition, how the billing unit is defined and how fees are structured for different classes of customers has an impact on the final rate.

7 Management Suggestions

It is recommended that the City establish City-wide stormwater user fees at an adequate rate to fund stormwater program activities, equipment, and capital projects, including stormwater regulatory compliance. Stormwater user fee revenue should be put in a dedicated enterprise fund used solely to cover stormwater costs. The City should work with the other entities (e.g., University of Idaho) to identify opportunities to reduce costs through regionalization of certain activities and cost sharing for the purchase and use of needed equipment. The City should consider using revenue bonds to finance stormwater capital projects over a longer timeframe to potentially reduce rates.

How soon the City needs to review and modify stormwater user fee rates depends on how the City chooses to implement the user fees. For instance, if the City chooses to implement an overall rate that will remain unchanged for the first permit term, then the rate should be set at about the average 5-year rate, which may affect the scheduling of some projects. However, if the City chooses to "ramp-up" the user fee rate over five years, it may be necessary to defer some activities and/or projects during the early years when the rate is kept low, and then increase rates above the average in later years to make up for the deferred revenue. In either case, it is likely that the user fee rate will need to be reviewed and approved each year as part of the City's annual budgeting process regardless of whether the rate changes.

Limitations

Work for this project was performed for the City of Moscow (Client), and this report was prepared in accordance with generally accepted professional practices for the nature and conditions of work completed in the same or similar localities, at the time the work was performed. This report does not represent a legal opinion. No other warranty, expressed or implied, is made.

All reports prepared by Aspect Consulting for the Client apply only to the services described in the Agreement(s) with the Client. Any use or reuse by any party other than the Client is at the sole risk of that party, and without liability to Aspect Consulting. Aspect Consulting's original files/reports shall govern in the event of any dispute regarding the content of electronic documents furnished to others.

ATTACHMENT 1

City of Moscow Stormwater Capital Improvement Program (CIP)

Aspect CONSULTING

City of Moscow
Stormwater User Fee Study
Capital Improvement Program - Last Updated 1/17/2020

			Projected Construction Year										
No	Description	Projected Cost	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
1	Stormline Replacement Program:	$6,750,000	$400,000	$400,000	$400,000	$500,000	$500,000	$750,000	$750,000	$750,000	$1,000,000	$1,000,000	$6,450,000
2	Sixth Street Corridor Storm Main Replacement												
3	Pullman Highway Storm Main Replacement												
4	Hogg Creek Storm Main Project												
5	Storm Structures Replacement Program	$675,000	$50,000	$50,000	$50,000	$50,000	$50,000	$75,000	$75,000	$75,000	$100,000	$100,000	$675,000
6	Storm System Expansion Program	$675,000	$50,000	$50,000	$50,000	$50,000	$50,000	$75,000	$75,000	$75,000	$100,000	$100,000	$675,000
7	Bridge Street Bridge	$750,000						$200,000	$550,000				$750,000
8	Sixth Street Bridge	$650,000							$200,000	$450,000			$650,000
9	Blaine Street Bridge	$650,000									$200,000	$450,000	$650,000
10	Home Street Pedestrian Bridge	$100,000									$100,000		$100,000
11	Fleet Replacement Program:												
12	Vactor Truck Accumulation (2021 Purchase)	$455,000	$350,000	$105,000									$455,000
13	Street Sweeping ER&R Reimbursement Fund	$726,000	$79,000	$79,000	$79,000	$79,000	$79,000	$79,000	$63,000	$63,000	$63,000	$63,000	$726,000
14	One Ton Truck	$36,000	$36,000										$36,000
15	3/4 Ton Truck	$32,000		$32,000									$32,000
16	Replacement of 1/2 of CCTV Van	$75,000								$75,000			$75,000
17	CCTV Equipment	$72,000	$36,000	$36,000									$72,000

City of Moscow
Stormwater User Fee Study
Capital Improvement Program - Last Updated 1/17/2020

			Projected Construction Year										
No	Description	Projected Cost	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	Total
18	Annual Detention System Maintenance	$50,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$5,000	$50,000
19	Collection System Oversizing Costs	$200,000	$20,000	$20,000	$20,000	$20,000	$20,000	$20,000	$20,000	$20,000	$20,000	$20,000	$200,000
20	Comprehensive Storm System Plan	$200,000		$100,000	$100,000								$200,000
21	Transfer To: Streets (Asphalt Patching)	$450,000		$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$50,000	$450,000
22	Transfer To: Information Systems	$100,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000	$100,000
23	Stormwater Program Staffing Projections:												
24	Stormwater Manager (0.33 FTE)	$394,378	$36,018	$36,738	$37,473	$38,222	$38,986	$39,766	$40,561	$41,372	$42,199	$43,043	$394,378
25	Environmental Services Manager (0.25 FTE)	$298,785	$27,286	$27,832	$28,389	$28,957	$29,536	$30,127	$30,730	$31,345	$31,972	$32,611	$298,785
26	New Stormwater Supervisor (1.0 FTE)	$1,005,687	$91,846	$93,683	$95,557	$97,468	$99,417	$101,405	$103,433	$105,502	$107,612	$109,764	$1,005,687
27	New Maint Worker Journeyman, Position 1 (1.0 FTE)	$725,465	$66,254	$67,579	$68,931	$70,310	$71,716	$73,150	$74,613	$76,105	$77,627	$79,180	$725,465
28	New Maint Worker Journeyman, Position 2 (1.0 FTE)	$725,465	$66,254	$67,579	$68,931	$70,310	$71,716	$73,150	$74,613	$76,105	$77,627	$79,180	$725,465
29	New Seasonal Maint Worker, Position 1 (0.3 FTE)	$81,996	$7,488	$7,638	$7,791	$7,947	$8,106	$8,268	$8,433	$8,602	$8,774	$8,949	$81,996
30	New Seasonal Maint Worker, Position 2 (0.3 FTE)	$81,996	$7,488	$7,638	$7,791	$7,947	$8,106	$8,268	$8,433	$8,602	$8,774	$8,949	$81,996
31	New Inspection/Review Technician, Position 1 (1.0 FTE)	$846,866	$77,341	$78,888	$80,466	$82,075	$83,717	$85,391	$87,099	$88,841	$90,618	$92,430	$846,866
32	New Admin Assistant, Position 1 (0.25 FTE)	$167,940	$15,337	$15,644	$15,957	$16,276	$16,602	$16,934	$17,273	$17,618	$17,970	$18,329	$167,940
33	New Finance Assistant, Position 1 (0.25 FTE)	$167,940	$15,337	$15,644	$15,957	$16,276	$16,602	$16,934	$17,273	$17,618	$17,970	$18,329	$167,940
	Assumes 2% annual wage growth for all new staffing positions												
	Total		**$ 1,446,648**	**$ 1,355,863**	**$ 1,191,243**	**$ 1,199,788**	**$ 1,208,504**	**$ 1,717,393**	**$ 2,260,461**	**$ 2,044,710**	**$ 2,129,143**	**$ 2,288,764**	**$ 16,842,517**