

**AGENDA ITEM SUMMARY**

DATE: 03/19/2012 DEPARTMENT: PW/Grants DEPT. HEAD SIGNATURE: HD

**SUBJECT:** Woodside Boulevard Project

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

At the March 12, 2012 City Council Meeting, the city moved to request concurrence from Federal Highways Administration in Hailey's selection of Knife River as the contractor for the Woodside Boulevard Project. Hailey received that concurrence from FHWA on March 13, 2012.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:**

| <b>FUNDING SOURCES</b>        |                  | <b>FYE 12 PROJECT COSTS</b>     |                  |
|-------------------------------|------------------|---------------------------------|------------------|
| TIGER II Grant                | 3,500,000        | Construction                    | 4,232,884        |
| ITD Cooperative Agreement     | 212,020          | CE&I and Testing                | 375,808          |
| <b>Capital Fund FYE 11</b>    |                  | Engineering                     | 115,712          |
| <b>Capital Fund FYE 12</b>    | 983,798          | Public Involvement              | 13,960           |
| General Operating Fund FYE 11 |                  | Legal                           | 40,000           |
| General Operating Fund FYE 12 | 130,000          | City Admin Payroll/Encumbrances | 186,474          |
| Copper Ranch PUD Contribution | 18,000           | Supplies                        | 595              |
| Water Enterprise Fund         | 385,907          | Contingency                     | 261,594          |
| Wastewater Enterprise Fund    | 36,934           | Walbert/Weiland Driveway Const. | 23,132           |
|                               |                  | Public Art                      | 16,500           |
| <b>TOTAL</b>                  | <b>5,266,659</b> | <b>TOTAL</b>                    | <b>5,266,659</b> |

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

|                          |                    |                          |                      |                          |                    |
|--------------------------|--------------------|--------------------------|----------------------|--------------------------|--------------------|
| X                        | City Administrator | <input type="checkbox"/> | Library              | <input type="checkbox"/> | Benefits Committee |
| X                        | City Attorney      | X                        | Mayor                | <input type="checkbox"/> | Streets            |
| <input type="checkbox"/> | City Clerk         | <input type="checkbox"/> | Planning             | X                        | Treasurer          |
| <input type="checkbox"/> | Building           | <input type="checkbox"/> | Police               | <input type="checkbox"/> | _____              |
| X                        | Engineer           | X                        | Grants Administrator | <input type="checkbox"/> | _____              |
| <input type="checkbox"/> | Fire Dept.         | <input type="checkbox"/> | P & Z Commission     | <input type="checkbox"/> | _____              |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Motion to approve Resolution 2012-15, authorizing signature of a construction contract and Notice to Proceed to Knife River for the TIGER II Woodside Boulevard Project

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agrmt./Order Originals: Record  
Copies (all info.): \_\_\_\_\_  
Instrument # \_\_\_\_\_

\*Additional/Exceptional Originals to: \_\_\_\_\_  
Copies (AIS only)





U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Idaho Division

3050 Lakeharbor Lane, Suite 126  
Boise, Idaho 83703-6217  
208-334-1843  
Idaho.FHWA@fdot.gov

March 13, 2012

Reply To: HFO-ID

The Honorable Fritz Haemmerle  
Mayor of Hailey  
115 Main Street South, Suite H  
Hailey, ID 83333

Attention: Tom Hellen, Public Works Director

RE: Woodside Blvd Complete Streets Initiative - Concurrence in Award

Dear Mayor Haemmerle:

FHWA has reviewed the bid summary and finds no evidence of improper bidding. We concur in your determination to award a contract to the low bidder, Knife River.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Miltner".

Ed Miltner  
Bridge / Operations Engineer

Hailey cc: Tracy Anderson, Heather Dawson, Ned Williamson  
FHWA cc: Peter Hartman, Gus Shanine, Frank Tooke, John Perry

2012\_0313 Woodside Blvd TDGII-C-07 Concurrence in Award.docx

**Notice to Proceed**

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

|   |                                   |
|---|-----------------------------------|
| Project: City of Hailey, ID - Woodside Boulevard Reconstruction |                                   |
| Owner: City of Hailey   | Owner's Contract No.:             |
| Contract: Woodside Boulevard Reconstruction                     | Engineer's Project No.: 83-11-020 |
| Contractor: Knife River - Northwest                             |                                   |
| Contractor's Address: 5450 W. Gowen Rd                          |                                   |
| Boise, ID 83709   |                                   |

You are notified that the Contract Times under the above Contract will commence to run on March 19, 2012. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is October 15, 2012, and the date of readiness for final payment is November 30, 2012.

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insured and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

Provide a preliminary Progress Schedule two (2) days prior to the Pre-Construction Conference

Provide a Preliminary Schedule of Submittals

Obtain an EPA General Construction Permit, Prepare a Storm Water Pollution Prevention (SWPP) Plan and Process a Notice of Intent (NOI)

|       |                      |
|-------|----------------------|
| _____ | City of Hailey       |
| _____ | Owner:               |
| _____ | Given by:            |
| _____ | Authorized Signature |
| _____ | Title                |
| _____ | Date                 |

Copy to Engineer (Use Certified Mail, Return Receipt Requested)

**AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Hailey ("OWNER") and  
Knife River - Northwest ("Contractor")

**ARTICLE 1 - WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work consists of the reconstruction and overlay of existing travel lanes, constructing new bicycle lanes; rolled curb, gutter, storm drainage facilities, planter strip, detached sidewalks, and bus shelters with areas for bicycle parking on Woodside Blvd., construction of a roundabout at the intersection of Woodside Blvd. and Fox Acres Rd. and construction of a traffic signal at the intersection of Woodside Blvd. and SH-75 in Hailey, Idaho. Construction items include those contained in the Base Bid ~~and Options~~ and are not limited to: new curb and gutter, sidewalk, bike lanes, subbase aggregate, base aggregate, plantmix pavement and items associated with a traffic signal. Numerous removal items are also included.

The Work is to be completed in 2012 in accordance with the following timeline:

- Traffic Signal at SH-75/Woodside Boulevard, North Woodside Reconstruction, South Woodside Reconstruction, (2012 Construction, commence on April 15, 2012 with substantial completion by October 15, 2012)
- Roundabout at Fox Acres Road/Woodside Boulevard, (2012 Construction, commence June 25, 2012 with substantial completion by August 31, 2012)

**ARTICLE 2 - THE PROJECT**

1.02 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

City of Hailey

Woodside Boulevard Reconstruction

**ARTICLE 3 - ENGINEER**

3.01 The Project has been designed by J-U-B ENGINEERS, Inc. (Engineer of Record).

Owner will select an Engineer to perform CE&I duties which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

#### ARTICLE 4 - CONTRACT TIMES

##### 4.01 *Time of the Essence*

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

##### 4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be completed on or before the dates outlined in 4.02 B and 4.02 C below and ready for final payment in accordance with Paragraph 14.07 of the General Conditions.
- B. The Work is to be completed in 2012 in accordance with the following timeline:
- Traffic Signal at SH-75/Woodside Boulevard, North Woodside Reconstruction, South Woodside Reconstruction, (2012 Construction, commence on April 15th, 2012 with substantial completion by October 15, 2012)
- C. The Work is to be completed in 2012 in accordance with the following timeline:
- Roundabout at Fox Acres Road/Woodside Boulevard, (2012 Construction, commence June 25, 2012 with substantial completion by August 31, 2012)

##### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner according to the following schedule:
1. For each day that expires after the time specified in Paragraph 4.02.B. the Contractor shall pay Owner **\$1500.00 per day** until the Work is substantially complete.
  2. For each day that expires after the time specified in Paragraph 4.02.C. the Contractor shall pay Owner **\$1500.00 per day** until the Work is substantially complete.

After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times or any proper extension thereof granted by Owner, Contractor shall pay Owner the amount specified in Paragraph 4.03.A.1. for each day that expires after the time specified in Paragraph 4.02 above

for completion and readiness for final payment until the Work is completed and ready for final payment.

#### ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit:

#### ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the **30th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

a. **95** percent (95%) of Work completed (with the balance being retainage).  
and

b. **90** percent (90%) of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent (95%) of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less **200** percent (200%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. If, at substantial completion, the character and progress of the work has been

satisfactory, the OWNER may, at the OWNER'S sole discretion, reduce the amount of retainage being held.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

**ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 8 percent (8%) per annum. Interest will not be paid on retainage.

**ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- D. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- E. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- F. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- I. The Contractor is an appropriately licensed public works contractor per Section 54-1902 (Idaho Code).
- J. Contractor shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (Document 00520, inclusive).
  - 2. Performance bond (Document 00610, inclusive).
  - 3. Payment bond (Document 00615, inclusive).
  - 4. General Conditions – Division 100 of the Idaho Standards for Public Works Construction 2010 (attached).
  - 5. Supplementary Conditions (Section 3, inclusive).
  - 6. Special Provisions (Section 4, Document 00820, inclusive).
  - 7. Standard Specifications and Standard Drawings – Idaho Standards for Public Works Construction 2010 (not attached).
  - 8. Drawings bearing the following general title: City of Hailey Woodside Boulevard Reconstruction dated January 2012

9. Addenda (numbers 1 to 2, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (Bidder's checklist Document 00040, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award (Document 00510, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed (Document 00550, inclusive).
    - b. Work Change Directives.
    - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## ARTICLE 10 – MISCELLANEOUS

### 10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

### 10.03 *Successors and Assigns*

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

#### 10.04 Severability

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

#### 10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### **ARTICLE 11 – DAVIS BACON AND RELATED ACTS (GENERAL WAGE DECISION)**

The Contractor will be required to pay not less than the minimum wage rates of "General Decision Number: ID120015 01/13/2012 ID15 determined by the Secretary of Labor for the project, as set out in the advertised specifications and Bid proposal. Such rates will be made a part of the contract covering the project. The Fair Labor Standards Act of 1938 (U.S.C.A. Title 29, Paragraphs 201-219, Chapter 8) shall apply in the employment of labor for this project.

General Wage Decision Number: ID120015 is part of this agreement and is attached.

#### **ARTICLE 12 – BUY AMERICA**

All steel or iron materials permanently incorporated into the work shall have been produced in the United States. All manufacturing processes for these materials including the application of coatings for such materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

Certifications which document that steel and iron have been manufactured and that coatings for iron or steel have been applied in the United States shall be provided to the Contractor by the manufacturer. The Contractor shall provide the required certifications to the Engineer prior to incorporating these materials into the work. Certification shall extend to materials utilized in manufactured and fabricated products purchased by the Contractor.

Certifications shall conform to the requirements of Subsection 106.04 of the Idaho Transportation Department Standard Specifications for Highway Construction printed here:

**106.04 Certification of Materials.** *Certain materials may be accepted on the basis of the manufacturer's or fabricator's certification in a form acceptable to the Engineer signed by a person in responsible charge that the material was manufactured in accordance with and meets specification requirements.*

*The manufacturer's certification will not preclude the sampling and testing of the material, or its final acceptance or rejection on the basis of the test results.*

*For materials indicated to be accepted by certification, the certificates and any required backup documentation such as mill reports shall be furnished with each shipment delivered to the work; and the type and quantity of certified material in the shipment must be clearly identified in the documentations.*

Small quantities of foreign manufactured material will be permitted so long as their total cost does not exceed 0.1% of the total contract amount or \$2,500 whichever is greater.

Should foreign steel, iron, or applied coatings for iron or steel in excess of the quantities allowed herein become incorporated into the work, the Contractor shall remove such materials in excess of the allowable maximum and replace them with materials complying with these specifications at no increased cost to the Owner.

#### **ARTICLE 13 – FHWA 1273 REQUIREMENTS**

Form FHWA-1273 requirements are a part of this agreement and are attached.

#### **ARTICLE 14 – FHWA 1273 MODIFICATION**

On Page 5, Part V-2b, employee social security number and address shall not be contained in payrolls. On Page 5 delete Part VI. Completion of FHWA-47 is no longer required.

#### **ARTICLE 15 – EEO SPECIAL PROVISIONS**

##### **DISADVANTAGED BUSINESS ENTERPRISE SPECIAL PROVISIONS FOR RACE/GENDER-CONSCIOUS PROJECTS**

EEO Special Provisions and Disadvantaged Business Enterprise Special Provisions for Race/Gender-Conscious Projects are a part of this agreement and are attached.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on March 19, 2012 (which is the Effective Date of the Agreement).

OWNER:

City of Hailey

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

Title: Mayor

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

Title: City Clerk

Address for giving notices:

115 Main St S.

Hailey, ID 83333

\_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

\_\_\_\_\_

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

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

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

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

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

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Idaho Public Works  
Contractors License No.: \_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

**RESOLUTION NO 2012-15**

A RESOLUTION OF THE HAILEY CITY COUNCIL TO ENTER INTO A WITH KNIFE RIVER AS THE CONTRACTOR FOR THE WOODSIDE BOULEVARD PROJECT AND AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT.

WHEREAS, The City of Hailey has received concurrence from Federal Highways Administration on March 13, 2012.

WHEREAS, The City of Hailey would like to enter into a contract with Knife River.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Hailey, Idaho that the City of Hailey enter into a contract for Development Impact Fee Study.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR ON MARCH 19, 2012.

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Fritz Haemmerle, Mayor

ATTEST:

---

Mary Cone, City Clerk

**AGENDA ITEM SUMMARY**

**DATE:** 3/19/2012

**DEPARTMENT:** Legal

**DEPT. HEAD SIGNATURE:** \_\_\_\_\_

**SUBJECT:**

Proposed ordinance amending Hailey's Annexation Procedures Ordinance (Title 14 of the Municipal Code)

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

Hailey was presented with a preliminary initiative petition to amend our Annexation Ordinance. The proposed language essentially requires an annexation applicant to post security for improvements and annexation fees. I was directed to draft an ordinance adopting the suggested ordinance. In an attempt to improve the language, I revised the language but the language maintains the purpose of the proposed initiative. At the March 5, 2012, council meeting, I was asked to draft language to require a fiscal analysis unless the property was 10 or fewer lots, in which case the council would have the authority but would not necessarily be required to mandate a fiscal study. Suggested language is found in Section 14.01.090(B). Please note that I also added language at the end of the security language which requires security to be posted before the effective date of an annexation ordinance.

Ned

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS** Case # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments:

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

|                      |                              |                |              |
|----------------------|------------------------------|----------------|--------------|
| ___ City Attorney    | ___ Clerk / Finance Director | ___ Engineer   | ___ Building |
| ___ Library          | ___ Planning                 | ___ Fire Dept. | _____        |
| ___ Safety Committee | ___ P & Z Commission         | ___ Police     | _____        |
| ___ Streets          | ___ Public Works, Parks      | ___ Mayor      | _____        |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Conduct a public hearing, discuss the proposed amendment and make any suggested revisions and corrections. If appropriate, make a motion to adopt the ordinance and authorize the mayor to conduct the first reading of the ordinance.

**FOLLOW-UP REMARKS:**



## Hailey Ordinance No. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING CHAPTER 14.01 OF THE HAILEY MUNICIPAL CODE, ENTITLED ANNEXATION PROCEDURES, BY AMENDING SECTION 14.01.090 TO GENERALLY REQUIRE A FISCAL ANALYSIS FOR ANNEXATION OF PROPERTY AND TO AUTHORIZE THE POSTING OF SECURITY FOR IMPROVEMENTS, ANNEXATION FEES AND CONTRIBUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and the City Council of the City of Hailey desire to authorize the City to generally require a fiscal study for annexed property and to require security for improvements and for annexation fees and contributions required for any annexation; and

WHEREAS, the Mayor and the City Council of the City of Hailey believe it is appropriate to amend Chapter 14.01 to authorize security for improvements and for annexation fees and contributions required for any annexation.

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

Section 1. Section 14.01.090 of the Hailey Municipal Code is hereby amended by the addition of the underlined language and by the deletion of the stricken language, as follows:

### **14.01.090 COUNCIL REVIEW.**

A. Conduct and Notice of Council Hearing. Upon receipt of the Commission's findings of fact and conclusions of law, the Council shall schedule a public hearing to review the application for annexation. Notice of the public hearing shall be conducted in the same manner as the notice for a Commission hearing pursuant to Section 14.01.070 of this Chapter. The Council shall have the right to request further information deemed necessary by the Council at any time during the proceedings.

B. Fiscal Impact. To assist the Council in the determination whether an annexation will have any negative fiscal impact, the Council ~~may, in its sole and absolute discretion, shall, except as otherwise provided herein,~~ require the applicant for annexation, at the applicant's sole expense, to submit a fiscal analysis or an updated fiscal analysis by a qualified and independent person or firm acceptable by the Council and in a format acceptable by the Council, to determine the proposed annexation's impact and to recommend the base amount of annexation fees. The Council may, in its sole and absolute discretion, require the applicant for annexation of real property of ten (10) or fewer lots based on the base density of the zoning district(s) adopted for the annexed property, at the applicant's sole expense, to submit a fiscal analysis or an updated fiscal analysis by a qualified and independent person or firm acceptable by the Council and in a format acceptable by the Council, to determine the proposed annexation's impact and to recommend the base amount of annexation fees. The Council retains the right to require further monetary or non-monetary contributions for any annexation. The applicant has the right to seek the City's approval of such a fiscal impact study at any point in the annexation process.

C. Findings. During the public hearing process of the application for annexation, the Council shall make its own findings of fact and conclusions of law to determine:

1) whether the proposed application will be harmonious and in accordance with the goals and policies of applicable components of the Hailey Comprehensive Plan,

2) whether the proposed annexation would be in the best interests of the citizens of Hailey, and

3) to the extent possible, whether the proposed annexation will have a negative fiscal impact upon the existing citizens of Hailey at the time of an annexation and in the future.

If the Council finds general compliance with the Hailey Comprehensive Plan, the Council shall then consider the application for a zoning classification and consider any and all factors it deems, in its sole and absolute discretion, important to determine whether an application for annexation shall be granted or denied. If the Commission made negative findings related to the Comprehensive Plan under Section 14.01.080 and therefore did not make a recommendation on zoning classification for the property sought to be annexed, but the Council subsequently made favorable findings related to the Comprehensive Plan and wishes to proceed with the annexation, the Council shall remand the proceedings to the Commission for its recommendation on zoning classification.

D. Decision. The Council has the sole and absolute discretionary right to approve, approve with conditions or deny an application for annexation. In addition, the Council is authorized to require, as a condition of approval, that the applicant and the City enter into an annexation agreement providing for the terms and conditions of an approved annexation. The Council may also require the applicant, as a condition of approval, to construct certain improvements, including but not limited to private and/or public utilities, facilities, recreational or other amenities and landscaping, and to pay such annexation fees or other monetary or non-monetary contributions as the Council deems necessary to protect the health, safety and general welfare of the citizens of Hailey. In the event the fees and/or contributions are not paid at the time of annexation approval, the Council shall require the applicant to provide security in the form of a performance bond, irrevocable letter of credit or cash equivalent acceptable to Hailey for one-hundred and fifty percent (150%) of the bona fide estimate of the cost of the improvements and one-hundred percent (100%) of the fees and/or contributions within thirty (30) days of the date when the Council approves the application but before the effective date of any annexation ordinance.

In the event a subsequent development proposal materially differs from the development shown in approved annexation, the annexation agreement shall provide that the proposed development may be denied, that the applicant shall be responsible for any increased annexation fees and/or that the property may be deannexed. There shall be no right of an appeal by an applicant or by an affected party from an adverse recommendation by the Commission or from an adverse decision of the Council on an annexation application. If the Council elects to approve the application for annexation with or without conditions, the Council shall also establish the appropriate zoning district(s) for the annexed property in accordance with the procedures set forth in Article XIV of the Hailey Zoning Ordinance.

Section 2. Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED  
BY THE MAYOR THIS \_\_\_\_\_ DAY OF MARCH, 2012.**

\_\_\_\_\_  
Fritz X. Haemmerle, Mayor

Attest:

\_\_\_\_\_  
Mary Cone, City Clerk

**LAWSON LASKI CLARK & POGUE, PLLC**  
ATTORNEYS AT LAW

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March 15, 2012

VIA EMAIL

mary.cone@haileycityhall.org

Honorable Fritz X. Haemmerle, Esq. &  
Hailey City Council  
c/o Mary Cone, City Clerk  
City of Hailey  
115 Main Street South  
Suite H  
Hailey, ID 83333

Re: Proposed Ordinance Amending Hailey's Annexation  
Procedures Ordinance

Dear Mayor and City Council Members:

As you are aware, I represent the Grant Stevens family, owners of approximately 175 acres around Colorado Gulch, just south of Hailey. The purpose of this letter is to comment on the Proposed Ordinance to amend the Annexation Procedures Ordinance and suggest alternative language to address the apparent concerns.

The proposed language requires upfront payment or the posting of security for all annexation fees and improvements required as a condition of annexation. Unless an annexation is tied to a single phase development approval which is to be constructed immediately, the practical impact of adopting the proposed language will be no more annexations.

In the typical development model, a land owner needs entitlements (i.e. preliminary plat approval) in order to qualify for financing to cover the cost of required infrastructure and fees associated with the development. It is usually not possible to have financing in place until the preliminary approval is granted and the costs associated with the development are known. Thus it will be virtually impossible for a developer to comply with the ordinance.

Mayor & Hailey City Council  
City of Hailey  
March 15, 2012  
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If the goal is to protect the City against a developer who ultimately can't pay fees, then the payment or security should be tied to final plat approval. Without final plat approval, nothing can be sold and there are no associated impacts to the City. Furthermore, if property is to be developed in phases, the fee/security should be allocated among the phases and tied to the issuance of final plat for each phase.

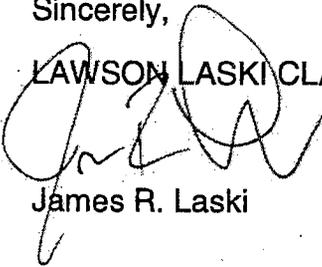
The strict language of the proposed amendment leaves the City with no flexibility to address unique situations that are inherent with annexations. For example, for large annexations which could take decades build out, it may be in the best interest of the City to tie impacts to the time of development, so that costs and improvements could be commensurate with then current impacts. Further, opportunities such as the Colorado Gulch Preserve, where the likely proposal would provide over 150 acres of public open space in the immediate term in conjunction with the annexation of approximately 21 acres, but no plans for development of the 21 acres in the near term, would be rendered economically impossible as a result of the requirement to pay impact costs long before there is market for development.

In short, while the intentions of the proposed amendment are admirable, practical consequences are too severe. As such, I urge you to consider the attached version of the amendment with suggested revisions in ***bold italics***. Such an approach would still protect the City, but maintain flexibility and avoid the chilling impact on potential annexation.

Thank you for your consideration of this matter.

Sincerely,

LAWSON LASKI CLARK & POGUE, PLLC



James R. Laski

JRL/dle

Enclosure

cc: Client  
Ned C. Williamson, Esq. (by email)

## Hailey Ordinance No. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING CHAPTER 14.01 OF THE HAILEY MUNICIPAL CODE, ENTITLED ANNEXATION PROCEDURES, BY AMENDING SECTION 14.01.090 TO GENERALLY REQUIRE A FISCAL ANALYSIS FOR ANNEXATION OF PROPERTY AND TO AUTHORIZE THE POSTING OF SECURITY FOR IMPROVEMENTS, ANNEXATION FEES AND CONTRIBUTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and the City Council of the City of Hailey desire to authorize the City to generally require a fiscal study for annexed property and to require security for improvements and for annexation fees and contributions required for any annexation; and

WHEREAS, the Mayor and the City Council of the City of Hailey believe it is appropriate to amend Chapter 14.01 to authorize security for improvements and for annexation fees and contributions required for any annexation.

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

Section 1. Section 14.01.090 of the Hailey Municipal Code is hereby amended by the addition of the underlined language and by the deletion of the stricken language, as follows:

### **14.01.090 COUNCIL REVIEW.**

A. Conduct and Notice of Council Hearing. Upon receipt of the Commission's findings of fact and conclusions of law, the Council shall schedule a public hearing to review the application for annexation. Notice of the public hearing shall be conducted in the same manner as the notice for a Commission hearing pursuant to Section 14.01.070 of this Chapter. The Council shall have the right to request further information deemed necessary by the Council at any time during the proceedings.

B. Fiscal Impact. To assist the Council in the determination whether an annexation will have any negative fiscal impact, the Council ~~may, in its sole and absolute discretion, shall, except as otherwise provided herein,~~ require the applicant for annexation, at the applicant's sole expense, to submit a fiscal analysis or an updated fiscal analysis by a qualified and independent person or firm acceptable by the Council and in a format acceptable by the Council, to determine the proposed annexation's impact and to recommend the base amount of annexation fees. The Council may, in its sole and absolute discretion, require the applicant for annexation of real property of ten (10) or fewer lots based on the base density of the zoning district(s) adopted for the annexed property, at the applicant's sole expense, to submit a fiscal analysis or an updated fiscal analysis by a qualified and independent person or firm acceptable by the Council and in a format acceptable by the Council, to determine the proposed annexation's impact and to recommend the base amount of annexation fees. The Council retains the right to require further monetary or non-monetary contributions for any annexation. The applicant has the right to seek the City's approval of such a fiscal impact study at any point in the annexation process.

C. Findings. During the public hearing process of the application for annexation, the Council shall make its own findings of fact and conclusions of law to determine:

- 1) whether the proposed application will be harmonious and in accordance with the goals and policies of applicable components of the Hailey Comprehensive Plan,
- 2) whether the proposed annexation would be in the best interests of the citizens of Hailey, and
- 3) to the extent possible, whether the proposed annexation will have a negative fiscal impact upon the existing citizens of Hailey at the time of an annexation and in the future.

If the Council finds general compliance with the Hailey Comprehensive Plan, the Council shall then consider the application for a zoning classification and consider any and all factors it deems, in its sole and absolute discretion, important to determine whether an application for annexation shall be granted or denied. If the Commission made negative findings related to the Comprehensive Plan under Section 14.01.080 and therefore did not make a recommendation on zoning classification for the property sought to be annexed, but the Council subsequently made favorable findings related to the Comprehensive Plan and wishes to proceed with the annexation, the Council shall remand the proceedings to the Commission for its recommendation on zoning classification.

D. Decision. The Council has the sole and absolute discretionary right to approve, approve with conditions or deny an application for annexation. In addition, the Council is authorized to require, as a condition of approval, that the applicant and the City enter into an annexation agreement providing for the terms and conditions of an approved annexation. The Council may also require the applicant, as a condition of approval, to construct certain improvements, including but not limited to private and/or public utilities, facilities, recreational or other amenities and landscaping, and to pay such annexation fees or other monetary or non-monetary contributions as the Council deems necessary to protect the health, safety and general welfare of the citizens of Hailey. In the event the fees and/or contributions are not paid at the time of annexation approval, the Council shall may require the applicant to provide security in the form of a performance bond, irrevocable letter of credit or cash equivalent acceptable to Hailey for one-hundred and fifty percent (150%) of the bona fide estimate of the cost of the improvements and one-hundred percent (100%) of the fees and/or contributions prior to approving the final plat for the phase of any development for which the fees or improvements, or portion of fees or improvements, are related. within thirty (30) days of the date when the Council approves the application but before the effective date of any annexation ordinance.

In the event a subsequent development proposal materially differs from the development shown in approved annexation, the annexation agreement shall provide that the proposed development may be denied, that the applicant shall be responsible for any increased annexation fees and/or that the property may be deannexed. There shall be no right of an appeal by an applicant or by an affected party from an adverse recommendation by the Commission or from an adverse decision of the Council on an annexation application. If the Council elects to approve the application for annexation with or without conditions, the Council shall also establish the appropriate

zoning district(s) for the annexed property in accordance with the procedures set forth in Article XIV of the Hailey Zoning Ordinance.

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**PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED  
BY THE MAYOR THIS \_\_\_\_\_ DAY OF MARCH, 2012.**

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Fritz X. Haemmerle, Mayor

Attest:

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Mary Cone, City Clerk