

AGENDA ITEM SUMMARY

DATE: 3/28/11 **DEPARTMENT:** Administrator **DEPT. HEAD SIGNATURE:** Heather Dawson

SUBJECT Draft Use Agreement with the Chamber of Commerce for the Interpretive Center

BACKGROUND:

In early January, the Hailey City Council discussed the Interpretive Center design and shared use with the Chamber of Commerce. Staff, chamber representatives, and the architect were present. The summary of that discussion is in the excerpted minutes below, and the council was given the attached Outline as part of their council packet.

***NB 015** Outline of concepts for Hailey Chamber of Commerce visitor center lease arrangement at Rodeo Grounds Interpretive Center.*

6:22:53 PM Heather Dawson requested the Council's thoughts on a potential partnership with the Chamber of Commerce at the Interpretive Center. Discussion covered a possible theme for the center, the amount of space the chamber may fill, exhibitions in the center, staffing, hours, and restroom access. The Council expressed support.

The discussion was conducted in order to give the architect sufficient direction to design the Interpretive Center floor plan. The architect has done that, and it is time to bring the final floor-plan design back to city council for the owner's authorization of it and direction to the architect to submit the design for building permit.

A couple of things have changed, namely, that we don't expect the building to be completed by the end of September. We received an EPA grant that allows this building to be built as a LEED certified building, and we have slowed the process down enough to make sure we can do the LEED planning on the front end.

Secondly, we have drafted the general form of the lease, and expect that some of the details will need to be completed based on the council's approval of the design. However, we felt it important that the broad strokes of the lease be discussed prior to the council's discussion with the architect. Members of the Chamber's executive committee and their staff have reviewed the lease, and identified that there are some concerns with 1) indemnifying the city, 2) assuming liability for the Displays, 3) the need for further definition of the square footage and exact spaces the Chamber will occupy, with rental fees and utility fees to be assessed only on those spaces as a portion of the entire building space, and 4) the need for the Chamber to receive compensation for establishing regular hours to keep the chamber office (and by virtue of that, the Display area) open to the public.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Budget Line Item # _____ Annual Line Item Amount _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

___ City Attorney ___ Clerk / Finance Director ___ Engineer ___ Mayor
___ P & Z Commission ___ Parks & Lands Board ___ Public Works ___ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

The last two New Business agenda items may flow best if the architect begins by showing the design and the concepts that led to it, the chamber then express some of its concerns with the draft lease, the council discuss whether these concerns can be met through refinement of the lease in the future, and then the final council consideration of the floor plan held

FOLLOW UP NOTES:

Agreement Outline with the Hailey Chamber of Commerce for use of the Interpretive Center as a combined-use Interpretive and Visitor Center

Presented to Hailey City Council on January 10, 2011

Mutual Goal: To provide the community with an easily accessible Interpretive Center and Visitor Center, which invites travelers to stop within Hailey, and encourages them to stay to explore and enjoy Hailey fully. To discuss this outline in such detail that city staff and the chamber of commerce staff have sufficient guidance to work with the Interpretive Center Architect on the final design of the interior space and proceed to construction drawing.

Term: An initial three year contract for services, which would begin approximately October 1, 2011. Preceding that contract for services, Hailey would develop a comprehensive Business Plan for all pertinent facilities within the complex.

Both the City of Hailey and the Hailey Chamber of Commerce include within their primary mission an element of economic development within Hailey. Economic activity is fostered by tourism and events.

Mutual Aid and Benefits:

Along with new recreational facilities including a multi-use Arena and the Hailey Ice Facility, Hailey plans to construct an Interpretive Center which is of sufficient size to house an office, in anticipation that the interpretive center may be staffed. Although the City of Hailey has the means by which to staff this facility, or could build the facility in such a manner that it can be fully viewed from the exterior of the building and no staffing would be needed, mutual interests and benefits may be served by leasing the facility to the Hailey Chamber of Commerce. Those benefits include:

- The facility is on the south end of town and on the right of Main Street, with access assisted by a traffic light, which location will encourage travelers from the south to stop, use restroom facilities, and be welcomed by both an active Chamber of Commerce Visitor Center and a vibrant historical Interpretive Center.
- Ingress, egress, and parking are of sufficient size to encourage large recreational vehicles to park at the facility.
- Hailey has previously assisted the Chamber of Commerce monetarily with its Main Street rental costs, in exchange for services which encourage visitors to remain in Hailey through information distribution and development of events and activities within Hailey.
- A contract arrangement wherein a public facility rental is afforded the Chamber of Commerce in exchange for a public service conducted by the Chamber of Commerce may be a way to reduce both the Chamber of Commerce and the City of Hailey's budgets.

Rates:

The City of Hailey should establish a rental cost for the offices within the facility, which should reflect the market price of commercial office rental space within Hailey. This amount would then be factored toward services provided by the Chamber of Commerce.

The Interpretive Center final design is pending this discussion. The Gallery may be constructed separately from the offices, or constructed with a customer service (docent) space within the Gallery. A significant point of discussion for the City of Hailey and the Chamber to hold is whether this customer service (docent) counter adds more responsibility to the Chamber or assists the Chamber in meeting its mission. Rental rates may be different under the two design scenarios.

Additional Services:

City Staff recommends that long-term Arena Event Management be contracted to an outside party. City staff will develop, in concert with the Arena Business Plan, specific elements of the Scope of Services for Arena Event Management, including advertising of the arena's availability for events, soliciting event promoters' interest in the facility, advertising specific events, developing event agreements, managing those agreements, and insuring clean-up and reporting to the City about the events successes and challenges. That Scope of Services may then be put out to bid as a professional contract for services. The Hailey Chamber of Commerce may want to be one of those bidders. (The Hailey Ice Facility Program Manager may also be a contender). Should the Hailey Chamber of Commerce be identified as the best contractor for this service, the Chamber could increase its funding and potentially its staffing to allow some weekend staffing of the Interpretive/Visitor Center.

Escape Clause:

If it is not working, the agreement should be able to be severed by either party.

USE AGREEMENT

This Use Agreement ("Agreement") is made this ____ day of _____, 2011, by and between **CITY OF HAILEY**, a municipal corporation ("City") and **HAILEY CHAMBER OF COMMERCE**, an Idaho non-profit corporation ("Chamber").

RECITALS

- A. The City is a municipal corporation and political subdivision of the State of Idaho. Richard L. Davis is the duly elected and acting mayor of the City of Hailey.
- B. Chamber is a duly organized and operating non-profit corporation in the State of Idaho. Dale Ewerson is the duly elected and acting president of Chamber. By resolution, the president of Chamber is authorized to execute this Agreement.
- C. City owns real property located at _____ Main Street, Hailey Idaho, a portion of which is being developed as an historical interpretive center building ("Center") as depicted on attached **Exhibit "A"** for historical exhibit displays ("Displays"). The City intends to construct the Center following the Fourth of July Rodeo event of 2011.
- D. Subject to the terms and conditions set forth herein, City is willing and agrees to allow Chamber to use the Center and Chamber is willing and agrees to use of the Center.

AGREEMENT

NOW, THEREFORE, based upon the foregoing recitals which are incorporated in this Agreement below as though set forth in full, the parties agree as follows:

- 1. Agreement Term.** Chamber shall have the right to use the Center for three (3) years between _____ and _____ ("Term"), provided the Center is ready and safe to be used as determined by the City, in City's sole discretion. Either party may terminate this Agreement, with or without cause, provided notice is delivered to the other party six (6) months prior to termination.
- 2. Rent.** Chamber shall pay to City as minimum rent for the Center an annual amount of \$ _____ which is determined to be fair market value for office space rental in Hailey. Rent shall be factored in monthly increments, and may be factored toward the monthly services provided by Chamber for tourist and visitor services.
- 3. Use of Center.** The Center may be used and occupied by Chamber only as a public visitor and information facility benefitting from the Displays, with associate office use and parking, and for no other purpose or purposes without City's prior written consent. Chamber shall not do or permit anything to be done in or about the Center or bring or keep anything into

the Center that will in any way increase the rate of fire insurance upon the building in which the Center is situated or upon the Displays. Chamber shall not perform any acts or carry on any practices that may injure the Center or the Displays. Chamber agrees that occupancy of the Center by the City, its agents, contractors, employee and invitees will occur regularly for events and Displays design, construction, installation, maintenance, and viewing. Chamber agrees to comply with (and cause its agents, contractors, employee and invitees to comply with) any rules and regulations with reasonable modification hereof which City may from time to time make and deliver to Center in writing, including rules which may require the Chamber to confine its materials, brochures, catalogues, activities, employees, agents, boards, and meetings to specific areas of within Center or to maintain specific minimum hours of operation.

4. **Security Deposit.** Chamber shall pay as a security deposit the sum of _____ and No/100 Dollars (\$ _____), receipt of which is hereby acknowledged, to be held by City as a Security Deposit for the faithful performance by Chamber of all the terms, covenants and conditions of this Agreement to be kept and performed by Chamber during the Term of this Agreement. This deposit does not limit City's rights or Chamber's obligations. Chamber understands that all or a portion of the deposit may be retained by City upon termination of the tenancy and that a refund of any portion of the deposit to the Chamber is conditioned on the following:

- a) Chamber shall clean and restore the Center to its condition at the commencement of the Term, less normal wear.
- b) Chamber shall have remedied or repaired any damage to the Center or the Displays to City's satisfaction.
- c) Chamber shall have complied with all of the provisions of this Agreement and with such other rules and regulations as the City may deem necessary.

If Chamber defaults with respect to any provision of this Agreement, including but not limited to the provisions relating to the payment of the monetary sums due herewith or protection from injury of the Displays, City may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any other amount which City may spend by reason of Chamber's default or to compensate City for any other loss or damage which City may suffer by reason of Chamber's default. If any portion of the Security Deposit is so used or applied, Chamber shall, within ten (10) days after written demand therefor, deposit cash with City in an amount sufficient to restore the Security Deposit to its original amount. Chamber's failure to do so shall be a material breach of this Agreement. Chamber shall not be entitled to interest on such deposit. If Chamber shall fully and faithfully perform every provision of this Agreement to be performed by him, the Security Deposit or any balance thereof shall be returned to Chamber at the expiration of the Term and after Chamber has vacated the Center.

5. **Utilities.** Chamber shall pay or reimburse City for all charges for electricity, gas, water, sewer, trash and telephone, rendered or supplied upon or in connection with the Center,

USE AGREEMENT/2

and shall indemnify the City against any liability or damages on such account. In addition, Chamber shall pay or reimburse the City for all services requested by Chamber or which are reasonably required by Chamber, such as street sweeping and police security and traffic control. The charges incurred in accordance with this paragraph shall be paid to the City within thirty (30) days of the date of billing for such charges.

6. **Insurance.** During the Term, Chamber shall, at its own expense, maintain in full force, comprehensive liability insurance, including public liability, property damage and contractual liabilities of the Chamber, written by a responsible insurance company licensed to do business in Idaho, and insuring Chamber and City (and such other persons, firms, or corporations designated by City) as additional named insureds against liability for claims of damage because of injury to persons and property and for death of any person or persons occurring in or about the Center and Displays. The liability covered by such insurance shall be not less than a combined single limit of One Million Dollars (\$1,000,000). At City's reasonable discretion, City shall increase the coverage to such amount as City and Chamber agree is commercially reasonable. The insurance shall be primary insurance such that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage held by City.

No party shall have the right or claim against the City for any losses, damages or injury, including losses, damages or injury to property or persons, including death, and for any business interruption, occurring on the Center or the adjoining property, (whether caused by the negligence or other fault of the City or the Chamber or their respective agents, employees, subtenants, licensees or assignees or whether caused by negligence or the conditions of the Center or any part thereof) by way of subrogation or assignment. The Chamber hereby waives and relinquishes any such right. The Chamber shall request Chamber's insurance carrier to endorse all applicable policies waiving the carrier's right of recovery under subrogation or otherwise in favor of the City and provide a certificate of insurance verifying this waiver.

All insurance required by this Section shall be in a form and with companies satisfactory to City and shall provide that it shall not be subject to cancellation or change except after at least thirty (30) days' prior written notice to City. The policy or policies, or duly executed certificates for them, shall be deposited with City within fifteen (15) days before the Term and on the same date each subsequent year of the Term.

7. **Exemption from Liability.** City shall not be liable to Chamber or to any other person whomsoever for any injury or damage to person or property occurring within or about the Center, unless caused by or resulting from the wilful and intentional acts of the City or any of the City's agents, servants or employees in the operation or maintenance of the Center. City shall not be liable in damages or otherwise for failure to furnish, or any interruption of service of any water, gas, electricity, telephone, or other utility caused by fire, accident, riot, strike, labor disputes, acts of God, the making of any repairs or improvements, or causes beyond the control of City, or for any loss, damage or theft of property of Chamber, its agents, servants or employees.

Any prevention, delay, or stoppage, due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control for the party obligated to perform shall excuse performance by such party for a equal to any such prevention, delay or stoppage, except as otherwise provided in this Agreement.

8. **Indemnification and Hold Harmless.** Chamber agrees to indemnify and hold City harmless from and against any and all claims, including mechanic's and materialman's liens, by or on behalf of any person or person, firm(s) or corporation(s), arising from the conduct or management of the activities conducted by the Chamber or arising out of any act or omission or negligence of Chamber, its contractors, licensees, agents, servants or employees, or arising from any accident, injury, or damage whatsoever caused by any person or property occurring in or about the Center or any part thereof, and the walkways adjoining the Center and from and against all costs, expenses, liabilities and attorney's fees incurred in connection with any such claim or proceeding brought thereon.

9. **Maintenance and Repairs.** Chamber shall, at its sole cost and expense, keep and maintain the interior and exterior of the Center (including, without limitation, all fixtures, plumbing and sewage facilities, heating, ventilation and air conditioning equipment, ice making equipment, interior and exterior walls, doors and windows) in good order, condition and repair during the Term, remove all rubbish and refuse therefrom, keep all landscaping in good condition, and replace or repair all electrical fixtures and mechanical, heating and plumbing fixtures and equipment that may be damaged or broken. If City deems it necessary for Chamber to make any repairs, City may demand that Chamber make them immediately, and if Chamber refuses or neglects to commence such repairs and to complete them with reasonable dispatch, City may make or cause such repairs to be made and Chamber shall immediately pay City for the costs of such repairs upon receipt of the costs. Chamber shall, at its cost and expense, promptly and properly observe, comply with, and execute, but not to the extent of making structural improvements, all present and future orders, regulations, directions, rules, laws, ordinances and requirements of all governmental authorities (including, but not limited to, state, municipal, county and federal governments and their departments, bureaus, boards and officials), and any other board or organization exercising similar functions, arising from the use or occupancy of, or applicable to the Arena.

10. **Alterations and Improvements.** Chamber shall not have the right to make changes, alterations or additions to the Center or the Displays without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion.

11. **Damage or Destruction.** If the Center is partially or totally destroyed or damaged by fire or other casualty so as to become partially or totally untenable, the City is not required to rebuild the Center, in which event either the City or Chamber may terminate this Agreement by providing written notice of intent to terminate. Upon termination, Chamber

waives any and all claims for damages based on termination of this Agreement and any loss of use.

12. **Defaults.** In the event Chamber shall breach Chamber's obligations pursuant to this Agreement, then City shall notify Chamber of such breach in writing by certified mail, return receipt requested, or hand delivery, and Chamber shall correct any failure to pay rent within three (3) days of receipt of such notification, and Chamber shall cure any other breach within thirty (30) days of the date of such notification. In the event of a default which cannot, with due diligence, be cured within a period of thirty (30) days, Chamber shall have such additional time to cure the same as may be reasonably necessary, providing Chamber proceeds promptly and with due diligence to cure such default after receipt of said notice. In the event Chamber fails to pay any sums due pursuant to this Agreement, or cure any other breach, after notice as aforesaid, then City shall have the option of electing to either (i) cancel and terminate this Agreement, or (ii) terminate Chamber's right to possession only without terminating the Agreement or (iii) pursue any other remedy available at law or in equity.

13. **Entry by City.** In the event of any entry in, or taking possession of, the Center as aforesaid, City shall have the right, but not the obligation, to remove from the Center all personal property of Chamber located therein and may store the same in any place selected by City, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, without notice to Chamber, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from Chamber to City under any of the terms hereof, and the balance, if any, shall be paid to Chamber.

14. **Liens.** Chamber shall keep the Center and the property on which the Center is situated free from any liens arising out of any work performed, materials furnished or obligations incurred by Chamber.

15. **Assignment and Subletting.** Chamber shall not assign or sublet this Agreement or any or all of Chamber's interest in the Center without first procuring the written consent of City, which may be made in the City's sole and absolute discretion.

16. **Waiver.** The failure of either party hereto to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any election herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, and the same shall be and remain in full force and effect. A particular waiver by either party of any said covenants or agreements to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants or agreements of this Agreement.

18. **Miscellaneous Provisions.**

a. **Final Agreement.** This Agreement represents the final agreement between the parties and merges and supersedes all prior negotiations, whether written or oral, with respect thereto.

b. **Modification.** This Agreement cannot be modified, changed, discharged, or terminated, except by writing signed by both the City and Chamber.

c. **Time is of the Essence.** Time and timely performance is of the essence of this Agreement.

d. **Applicable Law.** This Agreement shall be construed and enforced under the laws of the State of Idaho.

e. **Benefit.** This Agreement shall be binding upon and insure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns.

f. **Attorney's Fees.** In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover their reasonable costs and attorney's fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals.

g. **Presumption.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by either party.

h. **Notice.** Unless otherwise specifically provided for herein, notices given pursuant to the terms of this Agreement shall be deemed received on the date sent and shall be sent to the parties at their addresses first above given or such address as may be later specified by the party in writing.

i. **Further Action.** The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

j. **Authority.** Each signatory has full authority and consent to sign this Agreement. Chamber represents and warrants to City that it is a corporation organized, existing and in good standing under the laws of the State of Idaho, and it is authorized, by appropriate corporate resolution, to enter into and execute this Agreement and any and all documents related thereto.

k. **Severability.** The invalidity or illegality of any provision shall not affect the remainder of this Agreement.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Dated this _____ day of _____, 2011.

CITY:

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: _____
Mary Cone, City Clerk

By: _____
Richard L. Davis, Mayor

CHAMBER:

HAILEY CHAMBER OF COMMERCE,
an Idaho non-profit corporation

Dale Ewerson, its President

AGENDA ITEM SUMMARY

DATE: 3/28/11 **DEPARTMENT:** Administrator **DEPT. HEAD SIGNATURE:** Heather Dawson

SUBJECT Consideration of final floor plan design of Interpretive Center based on shared use concept with the Hailey Chamber of Commerce.

BACKGROUND:

In early January, the Hailey City Council discussed the Interpretive Center design and shared use with the Chamber of Commerce. Staff, chamber representatives, and the architect were present. The discussion was conducted in order to give the architect sufficient direction to design the Interpretive Center floor plan. The architect has done that, and it is time to bring the final floor-plan design back to city council for the owner's authorization of it and direction to the architect to submit the design for building permit.

The architect met with chamber members and city staff to identify the needs of the users and design the floor plan to accommodate those needs. The architect will present this evolution of thought in his presentation to the City Council.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

<u>Budget Line Item #</u>	<u>Annual Line Item Amount</u>
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ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

City Attorney Clerk / Finance Director Engineer Mayor
 P & Z Commission Parks & Lands Board Public Works Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

The last two New Business agenda items may flow best if the architect begins by showing the design and the concepts that led to it, the chamber then express some of its concerns with the draft lease, the council discuss whether these concerns can be met through refinement of the lease in the future, and then the final council consideration of the floor plan held

FOLLOW UP NOTES:
