

AGENDA ITEM SUMMARY

DATE: 4-21-14

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: NW

SUBJECT:

Syringa Mountain School Lease → / Resolution 2014-38

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IFAPPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The Syringa Mountain School has entered into a four (4) year lease with two four (4) extensions to lease the large green building at the intersection of Woodside Boulevard and Glenbrook near Power Engineers. Hailey owns narrow parcels directly to the west and south of the leased site. The school has approached Hailey for permission to use the parcels for gardening and play grounds. The Mayor and staff have met with school representatives and discussed a four (4) lease allowing the school to use the parcels for gardening and a play ground, provided the public has a right to use the property for gardening programs open to the general public.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
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: (IFAPPLICABLE)
____ 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:

Discuss the proposed lease. If satisfactory, make a motion to approve the lease and authorize the mayor to sign Resolution No. 2014-38 and the lease. If revisions are required, make a motion to continue to a date certain allowing a revised lease to be presented.

FOLLOW-UP REMARKS:

**CITY OF HAILEY
RESOLUTION NO. 2014-38**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT BETWEEN THE
CITY OF HAILEY AND THE WOOD RIVER WALDORF METHODS, INC. dba
SYRINGA MOUNTAIN SCHOOL WHICH ALLOWS WOOD RIVER WALDORF
METHODS, INC. dba SYRINGA MOUNTAIN SCHOOL USE OF CITY OF HAILEY
PROPERTY.**

WHEREAS, the City of Hailey desires to enter into a 4 year lease agreement with **WOOD RIVER WALDORF METHODS, INC. dba SYRINGA MOUNTAIN SCHOOL** and,

WHEREAS, **WOOD RIVER WALDORF METHODS, INC. dba SYRINGA MOUNTAIN SCHOOL** will lease property from the City of Hailey and that the Hailey City Council finds that it has authority under Idaho Code §50-1409 to lease Parcels HH and II of Woodside Subdivision No. 10, that Parcels HH and II are not needed for city purposes, and that the terms of the attached lease are just and equitable,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Lease Agreement and that the Mayor is authorized to execute the attached Agreement.j

Passed this 21st day of April, 2014.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

LEASE

This Lease is made this ____ day of April, 2014 ("Effective Date"), by and between **CITY OF HAILEY**, a municipal corporation ("Lessor") and **WOOD RIVER WALDORF METHODS SCHOOL, INC.**, an Idaho non-profit corporation ("Lessee").

RECITALS

A. The Lessor is a municipal corporation and political subdivision of the State of Idaho. Fritz X. Haemmerle is the duly elected and acting mayor of the City of Hailey. By resolution of the Hailey City Council, the Hailey mayor is authorized to execute this Lease.

B. The Lessee is a duly organized and operating non-profit corporation in the State of Idaho. Mary Gervase is the duly elected and acting president of the Lessee. By resolution, the president of the Lessee is authorized to execute this Lease.

C. Lessee intends to operate the Syringa Mountain School adjacent to real property owned by Lessor located at 1020 Woodside Boulevard, Hailey Idaho, more particularly described as Lots HH and II of Woodside Subdivision No. 10, a portion of which will be developed as a play area and outdoor garden, as depicted on attached **Exhibit "A"** ("Premises").

D. Pursuant to Idaho Code §50-1409, the Lessor has authority to lease real property not needed for city purposes, upon such terms as may be just and equitable.

E. Subject to the terms and conditions set forth herein, Lessor is willing and agrees to lease the Premises to Lessee and Lessee is willing and agrees to lease the Premises from Lessor.

AGREEMENT

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

1. **Lease Term.** The term of this Lease shall be for a period of time commencing on the Effective Date and expiring, unless sooner terminated, at midnight on May 31, 2018 ("Lease Term").

2. **Rent.** Lessee shall pay to Lessor as minimum rent for the Premises, in advance on the first day of the Lease Term, and on the first day of each and every year thereafter, without offset or deduction, the sum of One Dollar (\$1.00) per year.

3. **Use of Premises.** The Premises shall be used and operated as a play area and garden to be used by the Syringa Mountain School. Lessee shall operate and use the Premises in a safe, reasonable and prudent manner, and offer safe, reasonable and prudent programming ~~within the Premises during the Lease Term. Lessee shall use its best efforts to offer yearly~~ gardening programs that are reasonably affordable and open to the general public, not just those

affiliated with the Syringa Mountain School. Lessee shall not do nor permit anything to be done in or about the Premises or bring or keep anything in the Premises that will in any way increase the rate of fire insurance upon the Premises or permit the emission of any objectionable noise or odor. Lessee shall not perform any acts or carry on any practices that may injure the Premises. The Lessee shall keep the area noted as a fire lane on **Exhibit "A"** free from obstructions and accessible.

4. **Security Deposit.** Lessee shall pay as a security deposit the sum of Five Hundred and No/100 Dollars (\$500.00) ("Security Deposit"), receipt of which is hereby acknowledged, to be held by Lessor as security for the faithful performance by Lessee of all the terms, covenants and conditions of this Lease to be kept and performed by Lessee during the Lease Term, or an Extended Term, if applicable. This deposit does not limit Lessor's rights or Lessee's obligations. Lessee understands that all or a portion of the deposit may be retained by Lessor upon termination of the tenancy and that a refund of any portion of the deposit to the Lessee is conditioned on the following:

- a) Lessee shall clean and restore the Premises to its condition at the commencement of this Lease, less normal wear and tear.
- b) Lessee shall have remedied or repaired any damage to the Premises to Lessor's satisfaction.
- c) Lessee shall have complied with all of the provisions of this Lease and with such other rules and regulations as the Lessor may deem necessary.

If Lessee defaults with respect to any provision of this Lease, including but not limited to the provisions relating to the payment of rent and any of the monetary sums due herewith, Lessor 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 Lessor may spend by reason of Lessee's default or to compensate Lessor for any other loss or damage which Lessor may suffer by reason of Lessee's default. If any portion of the Security Deposit is so used or applied, Lessee shall, within ten (10) days after written demand therefor, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to its original amount. Lessee's failure to do so shall be a material breach of this Lease. Lessor shall not be required to keep this Security Deposit separate from his general funds, and Lessee shall not be entitled to interest on such deposit. If Lessee shall fully and faithfully perform every provision of this Lease to be performed by him, the Security Deposit or any balance thereof shall be returned to Lessee (or at Lessor's option, to the last assignee of Lessee's interests hereunder) at the expiration of the Lease Term, and after Lessee has vacated the Premises.

5. **Utilities.** Lessee shall pay directly to the appropriate utility or governmental agency all charges for electricity, gas, water, sewer, trash and telephone, rendered or supplied upon or in connection with the Premises, and shall indemnify the Lessor against any liability or damages on such account.

6. Insurance.

a) Liability Insurance Requirements. The Lessee shall maintain in full force and effect, at its sole cost and expense, during the Lease Term, or holding over period, comprehensive liability insurance, including public liability, property damage and contractual liabilities of the Lessee, written by a responsible insurance company licensed to do business in Idaho, for the purpose of protecting Lessor against liability for loss or damage, for bodily injury, property damage, personal injury, death, and errors and omissions, relating to the use of the Premises. Such policy shall provide insurance against property damage in an amount not less than \$500,000.00 and bodily injury with limits of not less than \$500,000.00 per person and \$1,000,000.00 total for each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of Lessor are increased pursuant to the Idaho Tort Claims Act (*Idaho Code §§6-901 et seq.*).

b) Workerman's Compensation and Unemployment Insurance. Lessee shall secure and maintain at least the statutory amounts of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho.

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

d) Form and Delivery of Policies. The Lessee's certificates of insurance shall name Lessor and its officials, employees and agents as additional named insured and shall be endorsed to specify that such policies cover the liability assumed by Lessee under this Lease. All insurance required by this Paragraph 6 shall be in a form and with companies satisfactory to Lessor and shall provide that it shall not be subject to cancellation, suspension, amendment or termination except after at least thirty (30) days' prior written notice to Lessor. The policy or policies, or duly executed certificates for them, shall be deposited with Lessor within fifteen (15) days after the day on which the Lease Term or an Extended Term, if applicable, commences and, upon renewal of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage.

7. Maintenance and Repairs. Lessee shall, at its sole cost and expense, keep and maintain the Premises in good order, condition and repair, remove all rubbish and refuse therefrom, and keep all landscaping in good condition. If, after thirty (30) days written notice, Lessee fails to maintain the Premises in accordance with this paragraph or commence such work, Lessor may make or cause such repairs to be made and Lessee shall immediately pay Lessor for the costs of such maintenance.

8. **Construction of Improvements, Landscaping and Play Equipment.** Lessee shall, at its sole expense, construct improvements on the Premises consisting of fencing, gardens, play equipment and drought-tolerant landscaping pursuant to plans approved by Lessor (the "Improvements") and make such repairs, alterations, additions and improvements thereto as Lessee deems desirable subject to the terms of the Lease. Any fencing along the west side of the Premises shall be post and rail fencing with sheep wire no higher than four feet (4') in height. Plantings, excluding any species grown for consumption, shall be drought-tolerant and shall use water conservation practices wherever feasible, including drip irrigation. Fee title to the Improvements, together with all additions and alterations, shall be vested in Lessor, subject to Lessee's right to occupy and use the Premises in accordance with this Lease.

9. **Alterations and Improvements.**

a) **Conditions for Alterations.** Lessee shall have the right to make changes, alterations or additions to the Premises only on the following conditions:

(i) No change, alteration or addition shall at any time be made which shall impair the structural soundness or diminish the value of the Premises.

(ii) No change, alteration or addition impacting the use or function of the Premises shall be made without the prior written consent of the Lessor, such consent not to be unreasonably withheld.

(iii) No change, alteration or addition shall be undertaken until the Lessee shall have procured and paid for all required municipal and other governmental permits and authorizations of the various municipal departments and governmental subdivisions having jurisdiction.

(iv) All work done in connection with any change, alteration or addition shall be done in accordance with the Lessor's consent, in a good and workmanlike manner and in compliance with the building and zoning laws, and with all other laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, and the appropriate departments, commissions, boards and officers thereof, and in accordance with the orders, rules and regulations of the board of fire-underwriters or any other body now or hereafter constituted exercising similar functions, and the Lessee shall procure certificates of occupancy and other certificates required by law.

(v) At all times when any change, alteration or addition is in progress, there shall be maintained, at Lessee's expense, workman's compensation insurance in accordance with law covering all persons employed in connection with the change, alteration or addition, and general liability insurance for the mutual benefit of the Lessee and the Lessor expressly covering the additional hazards due to the change, alteration or addition.

b) **Expiration of Lease Term.** All alterations, improvements, additions or fixtures, including trade fixtures, annexed or affixed to the Premises, including the floors, walls or ceilings, which cannot be removed without further damage to the Premises, shall be the

property of Lessor at the end or sooner termination of the Lease Term, and surrendered with the Premises as a part of the Premises, without disturbance, molestation, or injury. However, if any of the alterations, improvements, additions, or fixtures, including trade fixtures, can be removed without damage to the Premises, these improvements shall be the property of the Lessee, so long as the Premises are in the same condition, except for normal wear and tear, as found at the beginning of the Lease Term.

c) Lien. Lessee shall pay, when due, all sums of money that may become due or purportedly due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for Lessee in, at, upon, or about the Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises or Lessor's interest in the Premises, and Lessee shall cause each such lien to be fully discharged and released at the time performance of the obligations secured matures or becomes due. Lessee shall indemnify, defend and hold Lessor harmless against liability for any liens, claims or expenses, including attorney's fees, which may arise as a result of any work on the Premises, which indemnification shall survive the termination or expiration of this Lease.

10. Damage or Destruction.

a) Lessor's Obligation if Not Fully Insured. If the Premises are partially or totally destroyed or damaged by fire or other casualty so as to become partially or totally untenable, Lessor may, in its sole discretion, either rebuild or put the Premises in good condition and fit for occupancy within a reasonable time after such destruction or damage, or it may give notice terminating this Lease as of a date not later than sixty (60) days after such damage or destruction. If Lessor elects to repair or rebuild the Premises, it shall, within sixty (60) days after such damage or destruction, give Lessee notice of its intention to repair or rebuild and then shall proceed to make the repairs or to rebuild within a reasonable time after such damage or destruction. Unless Lessor elects to terminate this Lease, this Lease shall remain in full force and effect and the parties waive any provision of any law to the contrary. However, if Lessee is prevented from using any portion or all of the Premises during such period, the parties agree that there shall not be any abatement of rent and Lessee does hereby waive any claim for loss of use or possession of the Premises while the Premises are repaired or rebuilt.

b) Lessor's and Lessee's Work if Premises Rebuilt. If Lessor should elect to repair or rebuild because of any damage or destruction, Lessor's obligation shall be limited to the condition of the Premises as it existed at the commencement of the Lease Term. Lessee shall fully repair or replace all fixtures, exterior signs, equipment and other installations not covered by insurance.

11. Default and Remedies

a) Event of Default Defined. Each of the following shall be deemed a material default and breach or Event of Default:

(i) if Lessee shall, after written notice, default in the payment of rent or any other sum due under this Lease for thirty (30) days after written notice of failure to do so;

(ii) if Lessee, after written notice, shall default in the performance or observance of any other term, covenant, or condition of this Lease and shall not cure or remedy such default with reasonable dispatch within a period not exceeding thirty (30) days, unless said default or omission complained of shall be of such a nature that the same cannot be completely cured or remedied diligently within such thirty (30) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default;

(iii) if Lessee's interest, or any part of his interest, in this Lease be assigned or transferred, either voluntarily or by operation of law, without Lessor's consent;

(iv) the filing or execution or occurrence of:

(1) a petition or other proceeding by or against Lessee for, or the appointment of, a trustee, receiver, guardian, conservator, or liquidator of Lessee with respect to all or substantially all of his property, except a receiver appointed at the instance or request of Lessor;

(2) a petition or other proceeding by or against Lessee for its dissolution or liquidation, or the taking of possession of the property of Lessee by any governmental authority in connection with dissolution or liquidation; or

(3) the taking by any person of the leasehold created hereby or any part thereof upon execution, attachment or other process of law or equity.

(v) vacating or abandonment of the Premises; or

(vi) if Lessee, after written notice, fails to take action to remove a lien against the Premises for ten (10) days. In the event, Lessee is aware of any lien filed against the Premises, Lessee shall immediately notify Lessor in writing of the existence of the lien.

Notwithstanding anything to the contrary contained in the foregoing default clauses, the parties hereto agree that if the Lessee shall have defaulted in the performance of any (but not necessarily the same) term or condition of this Lease for three or more times during any twelve month period during the term hereof, then such conduct shall, at the election of the Lessor, represent a separate event of default which cannot be cured by the Lessee. Lessee acknowledges that the purpose of this provision is to prevent repetitive defaults by the Lessee under the Lease which work a hardship upon the Lessor and deprive the Lessor of the timely performance by the Lessee hereunder.

b) Lessor's Remedies. Upon occurrence of any Event of Default, Lessor may, at its option without any further demand or notice, in addition to any other remedy or right given hereunder or by law, do any of the following:

(i) Continuation of Lease. Lessor may elect to maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Lessee's right to possession, irrespective of whether Lessee shall have abandoned the premises. In the event Lessor elects not to terminate the lease, Lessor shall have the right to attempt to re-let the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as Lessor deems reasonable and necessary without being deemed to have elected to terminate the Lease including removal of all persons and property of Lessee from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new Lessee taking possession of the Premises. Notwithstanding that Lessor fails to elect to terminate the Lease initially, Lessor at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default by Lessee.

(ii) Termination of Lease. Lessor may elect to declare this Lease terminated, in which event the Lessor may terminate the Lessee's right to possession by any lawful means, the Lease shall terminate and the Lessee shall immediately surrender possession of the Premises to the Lessor. Upon any such re-entry, Lessor shall have the right to make any reasonable repairs, alterations or modifications to the Premises, which Lessor in its sole discretion deems reasonable and necessary.

All rights and remedies of Lessor hereunder shall not be exclusive but shall be cumulative. Any such re-entry or taking of possession of the Premises or property thereon shall be allowed by Lessee without hindrance, and Lessor shall not be liable in damages for any such re-entry or such taking of possession. Re-entry or taking of possession shall not be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee.

c) Payment of Expenses Incurred to Cure Defaults by Lessee. In the event of Lessee's breach or default of any covenant in this Lease, Lessor may at any time, after notice to Lessee in the manner required by Paragraph 16 of this Lease, cure such breach or default for the account and at the expense of Lessee. If Lessor at any time, by reason of such breach, is compelled to pay, or elects to pay, any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorney's fees, in instituting, prosecuting or defending any actions or proceedings to enforce Lessor's rights under this Lease or otherwise, the sum or sums so paid by Lessor, with all interest, costs and damages, shall be deemed to be additional rent under this Lease and shall be due from Lessee to Lessor on the first day of the month following the incurring of such expenses.

d) Waiver. A waiver of any breach or default shall not be a waiver of any other breach or default. Lessor's consent or approval shall not be deemed to waive or render unnecessary Lessor's consent to or approval of any subsequent similar act by Lessee.

12. Assignment and Subletting. Lessee shall not assign, mortgage or hypothecate this Lease, or any interest in this Lease, or permit the use of the Premises, in whole or in part, by any person or persons other than Lessee, without the prior written consent of the Lessor, in the sole discretion of Lessor; provided, however, Lessee shall remain primarily liable for the obligations arising from this Lease.

13. Lessor's Access to Premises. Lessor and its designees shall have the right to enter the Premises at all reasonable hours, and in emergencies at all times, (a) to inspect the Premises, (b) to make repairs, additions or alterations to the Premises, and (c) for any lawful purpose.

14. Holding Over.

a) Effect of Holding Over. If Lessee should remain in possession of the Premises after the expiration of the Lease Term, with the consent of Lessor and without executing a new Lease, then such holding over shall be construed as tenancy at will, subject to all conditions, provisions and obligations of this Lease insofar as the same are applicable to a tenancy at will.

b) Obligations of Lessee on Surrender. On the last day or sooner termination of the Lease Term, Lessee shall quit and surrender the Premises in good condition and repair (reasonable wear and tear, and damage by act of God excepted), subject to the requirements of Paragraph 7 of this Lease, together with all alterations, additions, and improvements that may have been made in, to, or on the Premises, except attached fixtures which have been removed without damage to the Premises, moveable furniture and unattached movable trade fixtures, all of which were put in at Lessee's expense. Lessee shall ascertain from Lessor within thirty (30) days before the end of the Lease Term, whether Lessor desires to have the Premises or any part of the Premises restored to the condition the Premises were in when delivered to Lessee, and if Lessor shall so desire, then Lessee shall so restore the Premises or such part of the Premises before the end of the Lease Term, at Lessee's sole cost and expense. On or before the end of the Lease Term, Lessee shall remove all of Lessee's property from the Premises, and all property not removed shall be deemed abandoned by Lessee. On or before the end of the Lease Term, or Lessee shall deliver all of the operating manuals of all the equipment, heating and air conditioning systems, refrigeration systems and all other mechanical systems on the Premises. If the Premises are not surrendered at the end of the Lease Term, Lessee shall indemnify Lessor against loss or liability resulting from delay by Lessee in surrendering the Premises, including, without limitation, any claims made by any succeeding Lessee based on the delay.

15. Representations. The Lessee acknowledges and agrees that Lessee has been informed and understands that the Lessor makes no representations or warranties to the Lessee of any kind or nature, directly or indirectly, express or implied, as to any matter whatsoever, with regard to the Premises, its durability, fitness for a particular purpose, merchantability, condition,

profitability and/or quality. Furthermore, the Lessee acknowledges that the Lessor and the Lessor's agents have made no representations of any material fact concerning the Premises, that the Lessee has had an adequate opportunity to inspect and investigate the Premises, that the Lessee has made a thorough independent examination and inspection of the Premises, that the Lessee is relying solely on that examination and inspection, and that the Lessee is acquiring possession of the Premises "AS IS." The Lessee's acceptance of possession of the premises shall constitute the Lessee's acknowledgment that the Premises are in good and tenantable condition.

16. Exculpatory Clauses.

a) Exemption of Lessor from Liability. Lessor shall not be liable to Lessee or to any other person whomsoever for any injury or damage to person or property occurring within or about the Premises or by any other Lessee of Lessor, unless caused by or resulting from the wilful and intentional acts of the Lessor or any of the Lessor's agents, servants or employees in the operation or maintenance of the Premises. Lessor 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 Lessor, or for any loss, damage or theft of property of Lessee, its agents, servants or employees.

b) Excusable Delays. 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 period equal to any such prevention, delay or stoppage, except as otherwise provided in this Lease.

c) Indemnification and Hold Harmless. Lessee agrees to indemnify, defend and hold Lessor harmless from and against any and all claims, including mechanic's and materialman's liens, by or on behalf of any person(s), firm(s) or corporation(s), arising from the conduct or management of the operations conducted by the Lessee or arising out of any act or omission of Lessee, 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 Premises or any part thereof, and the walkways adjoining the Premises and from and against all costs, expenses, liabilities and attorney's fees incurred in connection with any such claim or proceeding brought thereon.

17. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations under this Lease by either party or the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by certified mail, return receipt requested, postage prepaid, and addressed to the Lessor at:

City of Hailey.
115 Main Street So.
Suite H
Hailey, ID 83333

or to the Lessee at:

Wood River Waldorf Methods School, Inc.
PO Box 3531
Hailey, ID 83333

or to such other address as Lessor or Lessee may from time to time designate by notice to the other, which shall then become a new address of the party who shall give such notice. Unless otherwise specifically provided for herein, notices given pursuant to the terms of this Lease shall be deemed received on the date sent.

18. Waiver. The failure of either party hereto to insist upon strict performance of any of the covenants and agreements of this Lease, 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 Lease.

19. Miscellaneous Provisions.

a) Construction. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural. The masculine gender shall include the feminine and neuter genders. The word "person" shall include corporation, firm or association. This Lease or any section thereof shall not be construed against any party due to the fact that the Lease or any section thereof was drafted by a particular party.

b) Title and Captions. The headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

c) Final Agreement. This instrument contains all of the agreements and conditions made between the parties to this Lease and may not be modified orally or in any manner other than by an agreement in writing signed by all parties to this Lease or their respective successors in interest.

d) Time of Essence. Time is of the essence of each term and provision of this Lease.

e) All Required Payments are Additional Rent. Except as otherwise expressly stated, each payment required to be made by Lessee shall be in addition to and not in substitution for other payments to be made by Lessee and shall be additional rent.

f) Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of Lessor and Lessee.

g) Governing Law. This Lease, the rights, privileges, interests, and immunities of the parties, the obligations, duties, and performances of the parties, the

enforcement of this Lease and the several covenants, conditions and agreements hereof and any and all disputes that may arise between the parties shall be governed exclusively by the provisions of this Lease and by the laws of the State of Idaho.

h) Severability. The invalidity or illegality of any provision shall not affect the remainder of this Lease.

i) Attorney's Fees. In the event that either party hereto has to retain counsel for the purpose of enforcing any of the rights, duties or obligations arising out of or relating to this Lease, the non-prevailing party shall pay to the prevailing party the latter's reasonable attorney's fees and costs, whether or not litigation is actually instituted, and including attorney's fees and costs on appeal and bankruptcy.

j) Authority. Each signatory has full authority and consent to sign this Lease. Lessee represents and warrants to Lessor 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 Lease and any and all documents related thereto.

k) Execution of Necessary Instruments. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Lease.

l) Separate Counsel. Both parties to this lease have had full legal representation of their choice during the drafting and negotiation of this Lease.

m) 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 Lease.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Lease 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 April, 2014.

LESSOR:

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: _____
Mary Cone, City Clerk

By: _____
Fritz X. Haemmerle, Mayor

LESSEE:

WOOD RIVER WALDORF METHODS
SCHOOL, INC., an Idaho non-profit
corporation

Mary Gervase, its President

AGENDA ITEM SUMMARY

DATE: 4-21-14

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: NW

SUBJECT:

Public Art Ordinance Amendment

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

During the process of drafting bond documents for the Bio-Solids project, I discovered a conflict between the Public Art ordinance and Revenue Bond Act. Generally speaking, Hailey's Public Art ordinance requires 1.25% of the cost of a capital improvement project to be dedicated to public art. I was advised by our bond attorney that revenue bonds should not be used to pay for public art. Consequently, I have drafted the attached ordinance so a project funded by revenue bonds is excluded from the requirement of using 1.25% of the construction cost for public art.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
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:

Discuss the proposed amendment and instruct staff to put the proposed ordinance on the next agenda under Public Hearing.

FOLLOW-UP REMARKS:

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING SECTION 3.08.020 OF THE HAILEY MUNICIPAL CODE, TO EXCLUDE A PROJECT FUNDED BY REVENUE BONDS FROM THE DEFINITION OF CAPITAL IMPROVEMENT BOND; BY AMENDING SECTION 3.08.030 OF THE HAILEY MUNICIPAL CODE TO DELETE A PROJECT FUNDED BY A REVENUE BOND AS AN ELIGIBLE CAPITAL IMPROVEMENT PROJECT; BY PROVIDING FOR A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR THE EFFECTIVE DATE

WHEREAS, the Mayor and Hailey City Council have been advised that a capital improvement project funded by a revenue bond should not be required to comply with the Chapter 3.08 of the Hailey Municipal Code (Public Art) because public art does not necessarily generate revenue as required by the Revenue Bond Act under Idaho Code §§50-1027 *et seq.*; and

WHEREAS, the Mayor and Hailey City Council wish to comply with state law by amending Chapter 3.08 of the Hailey Municipal Code to exclude a Capital Improvement Project funded by revenue bonds from the requirement of complying with the Public Art Chapter of the Hailey Municipal Code.

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

Section 1. The definition of “Capital Improvement Projects” set forth in Section 3.08.020 of the Hailey Municipal Code is amended by the addition of the underlined language, as follows:

“Capital Improvement Projects” shall, for the purposes of this Chapter, mean every capital municipal construction or improvement project or portion thereof, paid for wholly or in part by the City where the total cost of such project is reasonably anticipated to be in excess of twenty five thousand dollars (\$25,000.00). A Capital Improvement Project shall include construction, renovation or remodel of any public park, public building or structure, street or road, or public parking facility whether developed by the City or developed privately and leased back to the City. Capital Improvement Projects shall exclude:

1. Maintenance of public improvements such as streets, sidewalks, curbs, alleys or right-of-way improvements;
2. Subsurface public utility improvements such as storm and sanitary sewers, water lines, fire hydrants, and other appurtenances;
3. The portion of a Capital Improvement Project funded by State and/or Federal monies which prohibit expenditure of such monies for the arts;
4. A Capital Improvement Project undertaken before the effective date of this Ordinance; or
5. A Local Improvement District.
6. A Capital Improvement Project funded by revenue bonds.

Section 2. Section 3.08.030 of the Hailey Municipal Code is amended by the deletion of the stricken language, as follows:

3.08.030 Applicability. Capital Improvement Projects shall be governed by this Chapter. In the event a bond is used to fund a Capital Improvement Project, the Capital Improvement Project shall be an eligible capital improvement project if so approved by a) the bond election ordinance, or b) ~~the bond ordinance authorizing revenue bonds or~~ e) other appropriate laws or regulations. Where a Capital Improvement Project is funded in whole or in part by State and/or Federal monies, only the portion of the Capital Improvement Project which permits expenditure of such monies for the arts shall be used to calculate the one and twenty-five hundredths percent (1.25%) dedication for the arts. Where a Capital Improvement Project is funded in whole or in part by State and/or Federal monies and the State or Federal monies do not allow for expenditure of such monies for the arts, only the portion of the City's required financial contribution to such Capital Improvement Project shall be used to calculate the one and twenty-five hundredths percent (1.25%) dedication for the arts and such percentage shall be in addition to the City's minimum required contribution to such Capital Improvement Project.

Section 3. If any section, paragraph, sentence or provision hereof or the application thereof to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

Section 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 5. This Ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.

ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR
this _____ day of _____, 2014.

Fritz X. Haemmerle, Mayor
City of Hailey

ATTEST:

Mary Cone
Hailey City Clerk

Publish: Idaho Mountain Express _____, 2014

