

AGENDA ITEM SUMMARY

DATE: 5/2/2011 DEPARTMENT: Legal DEPT. HEAD SIGNATURE: _____

SUBJECT:

Use Agreement (Sawtooth Rangers)

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The enclosed Use Agreement is designed to grant the Sawtooth Rangers a three year right to use the newly constructed rodeo arena. I have discussed this Use Agreement with Barry Lubovski who is representing the Rangers and incorporated the Rangers' suggestions. A meeting is scheduled for Friday.

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:

Make a motion to approve the Use Agreement and authorize the mayor to sign.

FOLLOW-UP REMARKS:

USE AGREEMENT

This Use Agreement ("Agreement") is made this ____ day of _____, 2011, by and between **CITY OF HAILEY**, a municipal corporation ("City") and **SAWTOOTH RANGERS RIDING CLUB, INC.**, an Idaho non-profit corporation ("Sawtooth").

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. Sawtooth is a duly organized and operating non-profit corporation in the State of Idaho. William Bobbitt is the duly elected and acting president of Sawtooth. By resolution, the president of Sawtooth 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 outdoor multi-use arena, as depicted on attached **Exhibit "A"** ("Arena"). The City intends to complete the Arena before the end of June, 2011, so the Arena will be available for the annual 4th of July rodeo in 2011.

D. Under the Equine Activities Immunity Act (*Idaho Code §§ 6-1801 et seq.*), the City and Sawtooth are entitled to certain immunity for activities within the Arena. The parties acknowledge that the City will not provide equipment or tack during the Events, as defined hereinafter, and is not responsible to determine whether a rodeo participant is able to safely engage in activities or safely manage animals during the Events or whether the animals are able to behave safely with the participants during the Events.

E. Subject to the terms and conditions set forth herein, City is willing and agrees to allow Sawtooth to use the Arena and Sawtooth is willing and agrees to use the Arena.

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.** Sawtooth shall have the exclusive right to use the Arena for three (3) years between June 30, 2011, and July 6, 2011, June 30, 2012 and July 6, 2012 and June 30, 2013 and July 6, 2013 ("Events"). Sawtooth shall also have the right to inspect and use the Arena before June 30, 2011, provided the Arena is ready and safe to be used as determined by the City, in City's sole discretion. Either party may terminate this Agreement, with cause, provided notice is delivered to the other party six (6) months prior to the events in 2012 and 2013.

2. **Rent.** Sawtooth shall pay to City as minimum rent for the Arena Two Thousand and no/100's Dollars (\$2,500.00) and \$1 per paid ticket (*i.e.*, non-complimentary tickets) after the first 2500 paid tickets are issued. The \$2,500 for each annual event shall be paid to the City before June 30 of each year of this Agreement, while the charges attributable to the \$1 per paid ticket shall be paid to the City on or before six weeks after the 4th of July of each year.

3. **Use of Arena.** The Arena may be used and occupied by Sawtooth only as a public facility as a rodeo ground facility, as a concession area and parking, and for no other purpose or purposes without City's prior written consent. Sawtooth shall not do or permit anything to be done in or about the Arena or bring or keep anything in the Arena that will in any way increase the rate of fire insurance upon the building in which the Arena is situated or permit the emission of any objectionable noise or odor. Sawtooth shall not perform any acts or carry on any practices that may injure the Arena or the building of which the Arena form a part. Sawtooth 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 Sawtooth in writing. The City agrees that the Professional Rodeo Cowboy Association ("PRCA"), Intermountain Professional Rodeo Association ("IMPRA") and the Idaho Cowboy Association ("ICA") shall be allowed to sponsor rodeo events only between August 1 and May 31 of the following year during the years of the Events. Notwithstanding the prohibition of the use of the Arena by PRA, IMPRA or ICA, the Arena may be used by other rodeo users (*e.g.*, 4-H, high school rodeo clubs and other amateur rodeo clubs) during the years of the Events, but not during the Events.

4. **Security Deposit.** Sawtooth 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 Sawtooth of all the terms, covenants and conditions of this Agreement to be kept and performed by Sawtooth during the term of this Agreement. This deposit does not limit City's rights or Sawtooth's obligations. Sawtooth 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 Sawtooth is conditioned on the following:

- a) Sawtooth shall clean and restore the Arena to its condition at the commencement of each Event, less normal wear and tear associated with a rodeo event.
- b) Sawtooth shall have remedied or repaired any damage to the Arena to City's satisfaction.
- c) Sawtooth 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 Sawtooth 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, 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 Sawtooth's default or to compensate City for any other loss or damage which City may suffer by reason of Sawtooth's default. If any portion of the Security Deposit is so used or applied, Sawtooth 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. Sawtooth's failure to do so shall be a material breach of this Agreement. Sawtooth shall not be entitled to interest on such deposit. If Sawtooth 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 Sawtooth at the expiration of the Events and after Sawtooth has vacated the Arena.

5. **Utilities.** Sawtooth 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 Arena during the Events, and shall indemnify the City against any liability or damages on such account. In addition, Sawtooth shall pay or reimburse the City for all services requested by Sawtooth or which are reasonably required by Sawtooth, 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 Events, Sawtooth shall, at its own expense, maintain in full force, comprehensive liability insurance, including public liability, property damage and contractual liabilities of the Sawtooth, written by a responsible insurance company licensed to do business in Idaho, and insuring Sawtooth 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 Arena. 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, Sawtooth shall increase the coverage to such amount as City and Sawtooth 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.

Sawtooth shall also ensure that all rodeo contestants who compete in the rodeo events during the Events provide proof of liability insurance, written by a responsible insurance company licensed to do business in Idaho, which covers claims of damage because of injury to persons and property and for death of any person or persons occurring in or about the Arena. The liability covered by such insurance shall be not less than a combined single limit of One Million Dollars (\$1,000,000).

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 Arena or the adjoining property, (whether caused by the negligence or other fault of the City or the Sawtooth or their respective agents, employees, subtenants, licensees or assignees or whether caused by negligence or the conditions of the Arena or any part thereof) by way of subrogation or assignment. The Sawtooth hereby waives and relinquishes any

such right. The Sawtooth shall request Sawtooth'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 each year within fifteen (15) days before each Event.

7. **Exemption from Liability.** City shall not be liable to Sawtooth or to any other person whomsoever for any injury or damage to person or property occurring within or about the Arena, 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 Arena. 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 Sawtooth, 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.** Sawtooth 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 Sawtooth or arising out of any act or omission or negligence of Sawtooth, 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 Arena or any part thereof, and the walkways adjoining the Arena and from and against all costs, expenses, liabilities and attorney's fees incurred in connection with any such claim or proceeding brought thereon. **Period of use just time of use**

9. **Maintenance and Repairs.** Sawtooth shall, at its sole cost and expense, keep and maintain the interior and exterior of the Arena (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 Events, 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. Sawtooth shall, at its sole cost and expense, remove all manure from the Arena before the end of each Event or store the manure on

site allowing it to decompose but only if allowed by City staff. If City deems it necessary for Sawtooth to make any repairs, City may demand that Sawtooth make them immediately, and if Sawtooth 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 Sawtooth shall immediately pay City for the costs of such repairs upon receipt of the costs. Sawtooth 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.** Sawtooth shall not have the right to make changes, alterations or additions to the Arena 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 Arena 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 Arena, in which event either the City or Sawtooth may terminate this Agreement by providing written notice of intent to terminate. Upon termination, Sawtooth waives any and all claims for damages based on termination of this Agreement and any loss of use.

12. **Defaults.** In the event Sawtooth shall breach Sawtooth's obligations pursuant to this Agreement, then City shall notify Sawtooth of such breach in writing by certified mail, return receipt requested, or hand delivery, and Sawtooth shall correct any failure to pay rent within three (3) days of receipt of such notification, and Sawtooth 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, Sawtooth shall have such additional time to cure the same as may be reasonably necessary, providing Sawtooth proceeds promptly and with due diligence to cure such default after receipt of said notice. In the event Sawtooth 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 Sawtooth'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 Arena, City shall have the right, but not the obligation, to remove from the Arena all personal property of Sawtooth 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 Sawtooth, 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 Sawtooth to City under any of the terms hereof, and the balance, if any, shall be paid to Sawtooth.

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

15. **Assignment and Subletting.** Sawtooth shall not assign or sublet this Agreement or any or all of Sawtooth's interest in the Arena 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

17. **Annual Review.** Within six (6) weeks following the end of each Event, Sawtooth shall submit a written report to the Hailey Mayor and City Council and if requested by the City, shall attend a public Hailey City Council meeting to answer any questions about the report. The report shall provide i) attendance records during the Event, ii) a detailed accounting of all revenue generated during the Event from all sources including ticket sales, advertisements, donations, concessions, etc., iii) a detailed accounting of all expenses incurred during the Event, iv) a description of advertising for the Event, v) a description of any problems with the Event, vi) a description of both written and oral complaints about the operations of the Event, and vii) any suggestions to improve future events at the Arena.

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 Sawtooth.

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. Sawtooth 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

SAWTOOTH:

SAWTOOTH RANGERS RIDING CLUB,
INC., an Idaho non-profit corporation

William Bobbitt, its President

Public Works Memo

To: Mayor Rick Davis
City Council Members

CC: Heather Dawson, City Administrator

From: Tom Hellen, Public Works Director/City Engineer 

Date: April 25, 2011

Re: Rodeo Ground Policy – Small Events

At the April 12, 2011 Parks & Lands Board meeting a scission was held regarding the use of the Multi-use arena by smaller groups. The following is an outline of the recommendations by the board.

Groups of less than 50:

A reservation is required (no more than 30 days in advance) with a \$25 reservation fee.

No animals

No additional amenities (restrooms opened for \$50)

Clean-up of trash

A responsible party to sign the reservation form

Groups with Livestock:

A reservation is required (no more than 30 days in advance) with a \$100 reservation fee.

Maximum of 10 animals/livestock

No additional amenities (restrooms opened for \$50)

Clean-up of trash and manure

A responsible party to sign the reservation form

Youth Community Events (4H, High School) over 50 attendees:

A reservation is required (no more than 30 days in advance) with a \$250 reservation fee.

Restrooms are opened

Clean-up of trash and manure

Concession opened for \$125

A responsible party to sign the reservation form

The thought with the Rodeo Grounds is we need a separate ordinance to cover these policies as this is different than a grass park. It is also recommended that these smaller groups be limited to Monday – Thursday unless there is no larger event planned. This is a discussion needed from Council with regards to the 30 day advance requirement.

The fee for the Youth Community Events is reducing by half the reservation fees for ticketed events. Council discussion on this is also needed.