

AGENDA ITEM SUMMARY

6/3/2013

DATE: 05/28/2013

DEPARTMENT: Public Works

DEPT. HEAD SIGNATURE: [Signature]

SUBJECT: Water Rights Transfer from Hiawatha Canal to the Big Wood River for Heagle Park Irrigation.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

**Overview**

The application presented here is to transfer a portion of the water rights of the Hiawatha Canal (0.33cfs) to the Big Wood River. This will allow the irrigation of Heagle Park with surface water. The transfer fee is \$100.00.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle# \_\_\_\_\_

Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_

Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_

Staff Contact: Jim Zarubica Phone # 788-9830 ext. 17

Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<input type="checkbox"/> City Attorney	<input type="checkbox"/> Clerk / Finance Director	<input type="checkbox"/> Engineer	<input type="checkbox"/> Building
<input type="checkbox"/> Library	<input type="checkbox"/> Planning	<input type="checkbox"/> Fire Dept.	
<input type="checkbox"/> Safety Committee	<input type="checkbox"/> P & Z Commission	<input type="checkbox"/> Police	<input type="checkbox"/> Streets
<input checked="" type="checkbox"/> Public Works	<input type="checkbox"/> Parks	<input type="checkbox"/> Mayor	

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD: Motion to approve application

authorize \$100 fee payment, and authorize mayor to sign. *and authorize the mayor to sign*

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator \_\_\_\_\_

Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date \_\_\_\_\_

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

FOLLOW-UP:

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

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

Draft 12-30-03

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**APPLICATION FOR PERMIT**  
To appropriate the public waters of the State of Idaho

Ident. No. \_\_\_\_\_

1. Name of applicant(s) City of Hailey Phone (208) 788-4221  
Name connector (check one):  and  or  and/or

Mailing address: 115 S. Main St., #H City Hailey  
State ID \_\_\_\_\_ Zip 83333 Email: \_\_\_\_\_

2. Source of water supply groundwater which is a tributary of \_\_\_\_\_

3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
2N	18E	16			SW	NE	Blaine	groundwater	new well

4. Water will be used for the following purposes:

- Amount 0.33 cfs for irrigation purposes from 4/15 to 10/31 (both dates inclusive)  
(cfs or acre-feet per year)
- Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per year)
- Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per year)
- Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per year)

5. Total quantity to be appropriated is (a) 0.33 cubic feet per second (cfs) and/or (b) \_\_\_\_\_ acre-feet per year (af).

6. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source. The diversion works will consist of a shallow well located approximately 50' from the Big Wood River.
- b. Height of storage dam n/a feet; active reservoir capacity n/a acre-feet; total reservoir capacity n/a acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11.  
For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required?  Yes  No
- c. Proposed well diameter is 10" inches; proposed depth of well is 50 feet.
- d. Is ground water with a temperature of greater than 85°F being sought?  Yes  No
- e. If well is already drilled, when? n/a; drilling firm n/a;  
Well was drilled for (well owner) n/a; Drilling Permit No. n/a

7. Description of proposed uses (if irrigation only, go to item 8):

- a. Hydropower; show total feet of head and proposed capacity in kW. \_\_\_\_\_
- b. Stockwatering; list number and kind of livestock. \_\_\_\_\_
- c. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. \_\_\_\_\_
- d. Domestic; show number of households \_\_\_\_\_
- e. Other; describe fully. \_\_\_\_\_

8. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
2N	18E	16			2.5														2.5

Total number of acres to be irrigated: 2.5

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? The park site is currently irrigated with water delivered through the City of Hailey potable water supply system.

- 10. a. Who owns the property at the point of diversion? City of Hailey (applicant)
- b. Who owns the land to be irrigated or place of use? City of Hailey (applicant)
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: n/a

11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. See Attachment 1 - Narrative Description of Project & Mitigation Plan

12. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

**The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.**

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Print Name (and title, if applicable)

\_\_\_\_\_  
Print Name (and title, if applicable)

**For Department Use:**

Received by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Preliminary check by \_\_\_\_\_  
 Fee \$ \_\_\_\_\_ Received by \_\_\_\_\_ Receipt No. \_\_\_\_\_ Date \_\_\_\_\_

# Attachment 1 – Narrative Description of Project and Mitigation Plan

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## Attachment 2 – Well Conceptual Design

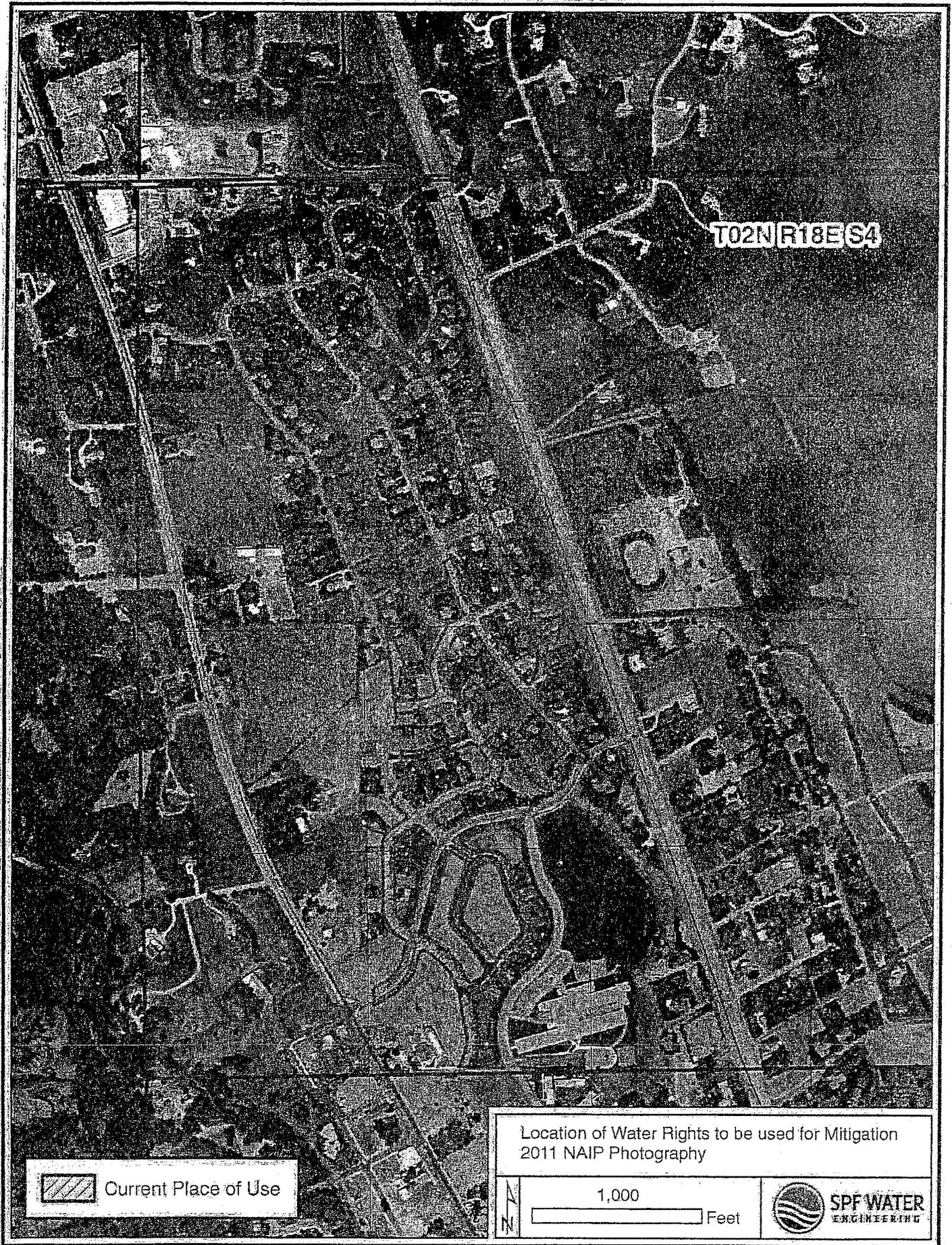
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## Attachment 3 – Stream Depletion Analysis

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## Attachment 4 – Water Rights to be Used for Mitigation

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T02N R18E S4

 Current Place of Use

Location of Water Rights to be used for Mitigation  
2011 NAIP Photography

 1,000  
Feet



IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-22773

WATER RIGHT NUMBER: 37-22773

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	WOOD RIVER VALLEY ASSOCIATES 2710 SUNRISE RIM RD BOISE, ID 83705 (208)344-8502
Previous Owner	EMB-HAILEY LP A CALIFORNIA LTD PTNR 9533 W PICO BLVD STE A LOS ANGELES, CA 90035 (213)271-2699
Current Owner	CITY OF HAILEY 115 S MAIN ST #H HAILEY, ID 83333 (208)788-4221

Priority Date: 05/01/1888

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u> _____ <u>To</u> _____	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15 to 10/31	0.19 CFS	
	<u>Total Diversion:</u>	0.19 CFS	

Location of Point(s) of Diversion

BIG WOOD RIVER SW1/4NW1/4 Sec. 20, Twp 03N, Rge 18E, B.M.  
BLAINE County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	18E	4					3.1			3.4	8.9					7.4			22.8
							L 3												

Total Acres: 22.8

Conditions of Approval:

1. E55 Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776 are limited to the irrigation of a combined total of 22.8 acres in a single irrigation season.
2. This right is a split from former right 37-21811
3. The rights listed below, shall provide nor more than 3.5 afa per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used. Combined Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-22773

- 4. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
- 5. G05 Water diverted from Headgate #22 delivered through Hiawatha Canal,
- 6. The diversion rate of this right is .194 cfs.

Remarks:

Comments:

- 1. dsmith 8/23/2012 Ownership Change  
Comment: This water right split from 37-21811
- 2. dsmith 8/24/2012 12:19:03 PM POU  
Comment: Updated Shape
- 3. dsmith 8/24/2012 12:21:54 PM POD  
Comment; Updated Shape

Dates and Other Information:

Licensed Date:  
 Decreed Date: 8/30/2011  
 Enlargement Use Priority Date:  
 Enlargement Statute Priority Date:  
 State or Federal: S  
 Owner Name Connector:  
 Water District Number:  
 Generic Max Rate Per Acre:  
 Generic Max Volume Per Acre:  
 Decree Defendant:  
 Decree Plaintiff:  
 Civil Case Number: 39576  
 Judicial District: FIFTH  
 Swan Falls Trust or Nontrust:  
 Swan Falls Dismissed:  
 DLE Act Number:  
 Carey Act Number:  
 Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
1		22.8
Combined Water Rights: 37-22773 , 37-22774 , 37-22775 , 37-22776		

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report 37-22774

WATER RIGHT NUMBER: 37-22774

<u>Owner Type</u>	<u>Name and Address</u>
Previous Owner	EMB-HAILEY LP A CALIFORNIA LTD PTNR 9533 W PICO BLVD STE A LOS ANGELES, CA 90035 (213)271-2699
Original Owner	WOOD RIVER VALLEY ASSOCIATES 2710 SUNRISE RIM RD BOISE, ID 83705 (208)344-8502
Current Owner	CITY OF HAILEY 115 S MAIN ST #H HAILEY, ID 83333 (208)788-4221

Priority Date: 09/18/1885  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15 to 10/31	0.20 CFS	
	<u>Total Diversion:</u>	0.20 CFS	

Location of Point(s) of Diversion  
BIG WOOD RIVER                                      SW1/4NW1/4                                      Sec. 20, Twp 03N, Rge 18E, B.M.  
BLAINE County

Place of Use  
IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	18E	4					3.1			3.4	8.9			7.4					22.8
							1.3												

Total Acres: 22.8

Conditions of Approval:

- The diversion rate of this right is .195 cfs.
- This right is a split from former right 37-21813.
- The rights listed below, shall provide nor more than 3.5 afa per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used. Combined Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776.

## IDAHO DEPARTMENT OF WATER RESOURCES

## Water Right Report 37-22774

4. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree, Section 42-1412(6), Idaho Code.
5. E55 Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776 are limited to the irrigation of a combined total of 22.8 acres in a single irrigation season.
6. G05 Water diverted from Headgate #22 delivered through Hiawatha Canal.

Remarks:Comments:

1. dsmith 8/23/2012 Ownership Change  
Comment: Split from 337-21813
2. dsmith 8/24/2012 1:17:51 PM POD  
Comment: Updated Shape
3. dsmith 8/24/2012 1:22:20 PM POU  
Comment: Updated Shape

Dates and Other Information:

Licensed Date:  
 Decreed Date: 8/30/2010  
 Enlargement Use Priority Date:  
 Enlargement Statute Priority Date:  
 State or Federal: S  
 Owner Name Connector:  
 Water District Number:  
 Generic Max Rate Per Acre:  
 Generic Max Volume Per Acre:  
 Decree Defendant:  
 Decree Plaintiff:  
 Civil Case Number: 39576  
 Judicial District: FIFTH  
 Swan Falls Trust or Nontrust:  
 Swan Falls Dismissed:  
 DLE Act Number:  
 Carey Act Number:  
 Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
1		22.8

Combined Water Rights: 37-22773 , 37-22774 , 37-22775 , 37-22776

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES  
Water Right Report 37-22775

WATER RIGHT NUMBER: 37-22775

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	WOOD RIVER VALLEY ASSOCIATES 2710 SUNRISE RIM RD BOISE, ID 83705 (208)344-8502
Previous Owner	EMB-HAILEY LP A CALIFORNIA LTD PTNR 9533 W PICO BLVD STE A LOS ANGELES, CA 90035 (213)271-2699
Current Owner	CITY OF HAILEY 115 S MAIN ST #H HAILEY, ID 83333 (208)788-4221

Priority Date: 06/30/1884  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15	to 10/31	0.39 CFS	
	<u>Total Diversion:</u>		0.39 CFS	

Location of Point(s) of Diversion  
BIG WOOD RIVER SW1/4NW1/4 Sec. 20, Twp 03N, Rge 18E, B.M.  
BLAINE County

Place of Use  
IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	18E	4					3.1				3.4	8.9						7.4	22.8
							1.3												

Total Acres: 22.8

Conditions of Approval:

1. The rights listed below, shall provide nor more than 3.5 afa per acre at the field headgate for irrigation of the lands in the place of use whenever sprinkler methods of irrigation are used. Combined Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776.
2. G05 Water diverted from Headgate #22 delivered through Hiawatha Canal.
3. E55 Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776 are limited to the irrigation of a combined total of 22.8 acres in a single irrigation season.

## IDAHO DEPARTMENT OF WATER RESOURCES

## Water Right Report 37-22775

4. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
5. The diversion rate of this right is .387 cfs.
6. This right is a split from former right 37-21815.

Remarks:Comments:

1. dsmith 8/24/2012 Ownership Change  
Comment: Split from 37-21815

2. dsmith 8/24/2012 1:39:15 PM POU  
Comment: Updated Shape

3. dsmith 8/24/2012 1:40:12 PM POD  
Comment: Updated Shape

Dates and Other Information:

Licensed Date;  
Decreed Date: 8/30/2010  
Enlargement Use Priority Date;  
Enlargement Statute Priority Date:  
State or Federal: S  
Owner Name Connector;  
Water District Number;  
Generic Max Rate Per Acre;  
Generic Max Volume Per Acre:  
Decree Defendant:  
Decree Plaintiff:  
Civil Case Number: 39576  
Judicial District: FIFTH  
Swan Falls Trust or Nontrust;  
Swan Falls Dismissed;  
DLE Act Number:  
Carey Act Number:  
Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
1		22.8

Combined Water Rights: 37-22773 , 37-22774 , 37-22775 , 37-22776

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-22776

WATER RIGHT NUMBER: 37-22776

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	WOOD RIVER VALLEY ASSOCIATES 2710 SUNRISE RIM RD BOISE, ID 83705 (208)344-8502
Previous Owner	EMB-HAILEY LP A CALIFORNIA LTD PTNR 9539 W PICO BLVD STE A LOS ANGELES, CA 90035 (213)271-2699
Current Owner	CITY OF HAILEY 115 S MAIN ST #H HAILEY, ID 83333 (208)788-4221

Priority Date: 03/24/1883  
Basis: Decreed  
Status: Active

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/15	to 10/31	0.23 CFS	
	<u>Total Diversion:</u>		0.23 CFS	

Location of Point(s) of Diversion

BIG WOOD RIVER SW1/4NW1/4 Sec. 20, Twp 03N, Rge 18E, B.M.  
BLAINE County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	18E	4					3.1				3.4	8.9						7.4	22.8
							1.3												

Total Acres: 22.8

Conditions of Approval:

- The diversion rate of this right is .235 cfs.
- The rights listed below, shall provide not more than 3.5 afa per acre at the field headgate for irrigation of the lands in the place of use whenever sprnklr methods of irrigation are used. Combined Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-22776

- 3. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree, Section 42-1412(6), Idaho Code.
- 4. This right is a split from former right 37-21817 .
- 5. E55 Right Nos. 37-22773, 37-22774, 37-22775 and 37-22776 are limited to the irrigation of a combined total of 22.8 acres in a single irrigation season.
- 6. G05 Water diverted from Headgate #22 delivered through Hiawatha Canal.

Remarks:

Comments:

- 1. dsmith 8/24/2012 Ownership Change  
Comment: Split from 37-21817
- 2. dsmith 8/24/2012 1:40:56 PM POD  
Comment: Updated Shape
- 3. dsmith 8/24/2012 1:42:00 PM POU  
Comment: Updated Shape

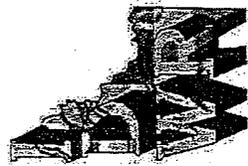
Dates and Other Information:

Licensed Date:  
 Decreed Date: 8/30/2010  
 Enlargement Use Priority Date:  
 Enlargement Statute Priority Date:  
 State or Federal: S  
 Owner Name Connector:  
 Water District Number:  
 Generic Max Rate Per Acre:  
 Generic Max Volume Per Acre:  
 Decree Defendant:  
 Decree Plaintiff:  
 Civil Case Number: 39576  
 Judicial District: FIFTH  
 Swan Falls Trust or Nontrust:  
 Swan Falls Dismissed:  
 DLE Act Number:  
 Carey Act Number:  
 Mitigation Plan: False

Combined Use Limits:

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
1		22.8
Combined Water Rights: 37-22773 , 37-22774 , 37-22775 , 37-22776		

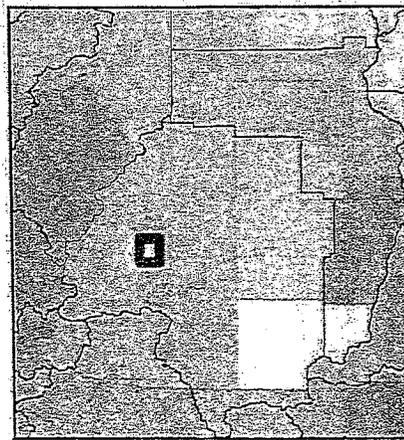
Water Supply Bank:



# Idaho Department of Water Resources

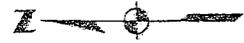
Water Right  
 37-22773  
 37-22774  
 37-22775  
 37-22776  
 (IRRIGATION)

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters

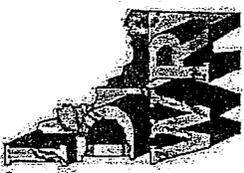
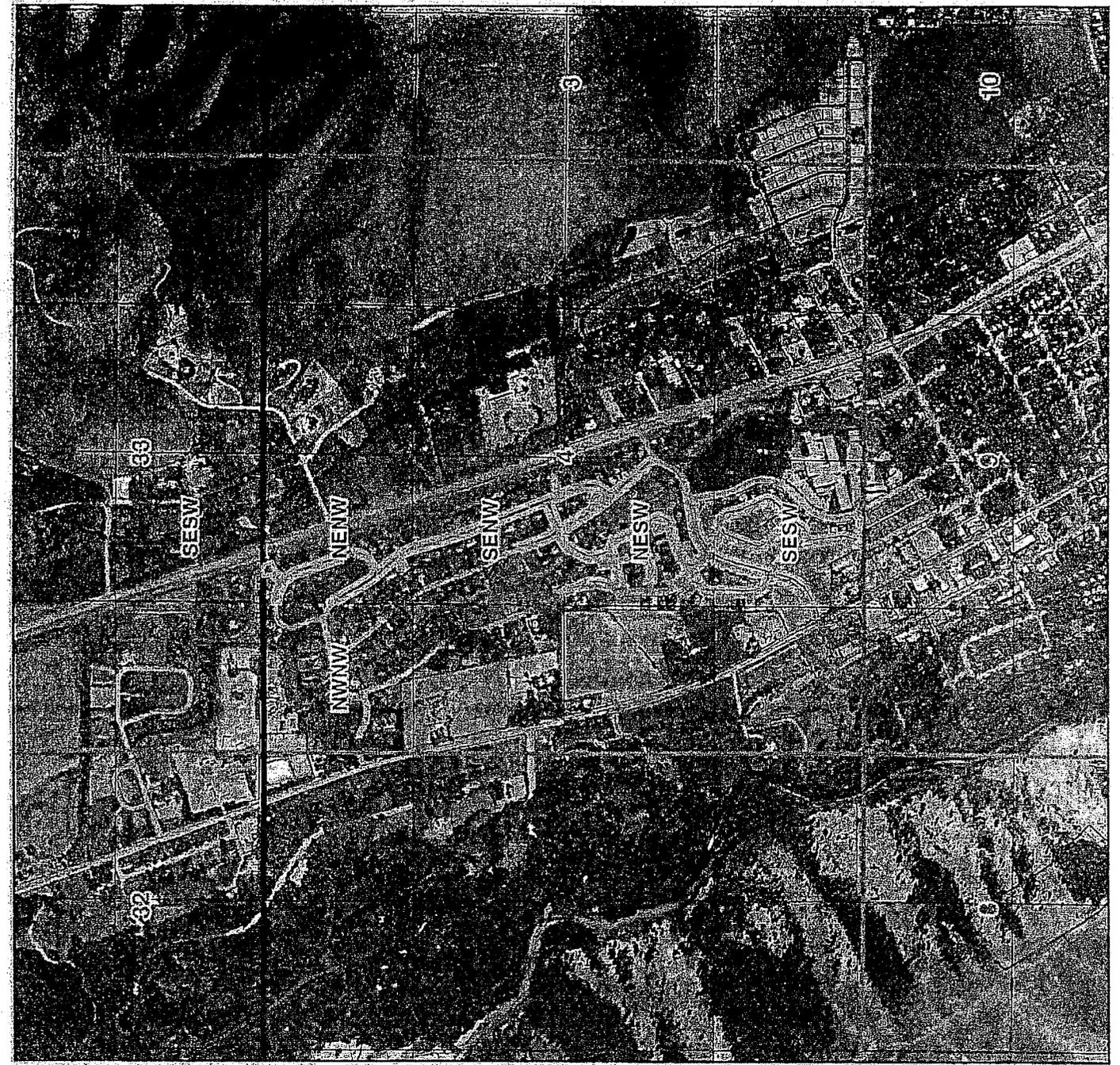


**Blaine County**  
**IDWR Basin 37**

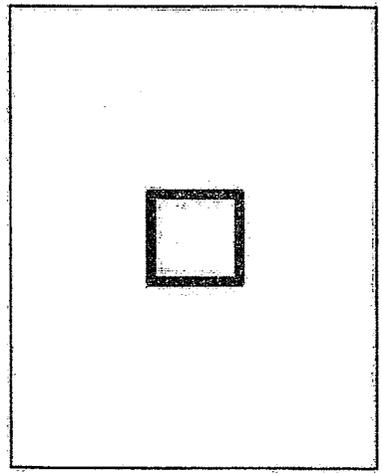
Prepared by Smith, Danni  
 On August 24, 2012  
 2009 Aerial Photography



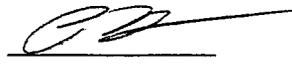
OWNER: DANNI SMITH  
 NOTE: This is a water right, not a land survey. It is not a warranty of any kind.



37-22773  
37-22774  
37-22775  
37-22776



**AGENDA ITEM SUMMARY**

DATE: 6/3/13 DEPARTMENT: PW - Streets DEPT. HEAD SIGNATURE: 

**SUBJECT:** Motion to approve Resolution 2013-~~46~~<sup>46</sup> authorizing contract with Valley Paving for the pulverizing of existing material and paving of the alleys.

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

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

The alley clean-up project includes pulverizing existing material and asphalt paving in the business district alleys. The alleys between 1<sup>st</sup> & Main St from Galena Street to Myrtle Street have been cleaned, will be graded and then paved by June 21.

**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)

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

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Motion to approve w/ resolution 2013-46-

**ADMINISTRATIVE COMMENTS/APPROVAL:**

City Administrator \_\_\_\_\_ Dept. Head Attend Meeting (circle one) Yes No

**ACTION OF THE CITY COUNCIL:**

Date \_\_\_\_\_

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

**FOLLOW-UP:**

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

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

**CITY OF HAILEY  
RESOLUTION NO. 2013-46**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY  
AUTHORIZING THE EXECUTION OF CONTRACT FOR SERVICES WITH VALLEY  
PAVING FOR PULVERIZING EXISTING MATERIAL AND ASPHALT PAVING FOR  
THE CITY OF HAILEY**

WHEREAS, the City of Hailey desires to enter into an agreement with Valley Paving under which Valley Paving will perform pulverizing of existing material and asphalt paving of alleys for the City of Hailey.

WHEREAS, the City of Hailey and Valley Paving have agreed to the terms and conditions of the Scope of Work and Task Order, a copy of which is attached hereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO**, that the City of Hailey approves the Scope of Work between the City of Hailey and Valley Paving and that the Mayor is authorized to execute the attached Agreement,

Passed this 3rd day of JUNE, 2013.

City of Hailey

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

ATTEST:

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



## Page 1 of 2 of General Provisions

### General Provisions

**1. DEFINITIONS.** As used herein, (i) "Contractor" shall mean Lakeside Industries or any division thereof; (ii) "Contracting Party" shall mean the person or entity purchasing materials and/or services as set forth on the front page hereof and pursuant to these General Provisions; and (iii) "Agreement" shall mean the contract formed between Contractor and Contracting Party by Contracting Party's acceptance of those terms and conditions set forth on the front page hereof and these General Provisions and/or materials and/or services provided to Contracting Party by Contractor.

**2. ACCEPTANCE.** Unless Contracting Party has signed and returned this Agreement to Contractor within thirty (30) calendar days of the date first stated on the front page hereof, Contractor's proposal shall be null and void. Contractor hereby objects to any conflicting, additional and/or different terms contained in any proposal or other writing issued by Contracting Party for purposes of accepting the proposal set forth herein and the same shall not become a part of this Agreement unless agreed upon in writing by Contractor and Contracting Party.

**3. COST ESCALATION FOR ASPHALT.** Contractor's proposal herein is based upon local vendor posted prices for liquid asphalt as of the date of Contractor's proposal. In the event the actual prices exceed such posted prices, the Contract Price shall be equitably adjusted by change order to reflect such increase. Contractor reserves the right to terminate this Agreement if an equitable adjustment cannot be agreed upon by Contracting Party and Contractor. Payment for any such adjustment shall be made in accordance with the terms and conditions of this Agreement.

**4. CREDIT VERIFICATION.** This Agreement is subject to Contractor's verification of Contracting Party's credit and Contractor's determination that such credit is adequate or satisfactory to Contractor. Contractor reserves the right to withdraw its proposal should Contractor reasonably determine that such credit verification is unsatisfactory or inadequate.

**5. TERMS OF PAYMENT.** Unless otherwise provided for herein, payment shall be due to Contractor within ten (10) days of the date of any invoice issued by Contractor to Contracting Party. Interest shall accrue on all overdue invoices at the rate of 1-1/2% per month (18.00% per annum) or the highest rate allowed by law.

**6. SCHEDULE.** This Agreement is subject to Contractor's review and approval of Contracting Party's schedule. Contracting Party shall coordinate other contractors' and subcontractors' work to prevent any delay or interference with Contractor's work.

**7. CHANGES.** Contracting Party, without invalidating the Agreement, may order changes in the scope of the work provided for by this Agreement, with the cost of the work and the time to complete such work being adjusted accordingly. Such changes in the work shall be authorized only by written change order signed by Contracting Party and Contractor.

**8. PROPERTY LINES.** Contracting Party warrants that Contracting Party knows the actual location of all legal property lines and that Contracting Party, prior to commencement of work hereunder, shall place stakes clearly indicating such property lines.

**9. PERMITS.** Any permits that must be secured prior to commencement of the work hereunder shall be secured and paid for by Contracting Party.

**10. DELAYS.** If Contractor is delayed at any time in the commencement or progress of the work by any act or neglect of Contracting Party, or by any employee or agent of Contracting Party, or by any separate contractor employed by Contracting Party, or by changes ordered in the work by Contracting Party, or by labor disputes, fire, abnormal adverse weather conditions, force majeure, unusual delay in transportation, fuel, material, or labor shortages or unavailability, action or inaction of public authorities not arising out of the fault of Contractor, casualties or any other causes beyond Contractor's reasonable control, then the Contract Time shall be

extended by change order for a period of time reasonably necessary to alleviate the effect of such events on Contractor. Delays beyond Contractor's reasonable control shall be compensable to Contractor and such equitable adjustment of the Contract Price shall be made by change order. Contractor reserves the right to terminate this Agreement if an equitable adjustment cannot be agreed upon by Contracting Party and Contractor. Payment for any such adjustment shall be made in accordance with the terms and conditions of this Agreement.

**11. HAZARDOUS SUBSTANCES.** Contracting Party agrees to indemnify, defend and hold harmless Contractor and its employees and subcontractors from liability related to the existence of hazardous substances at the project site, unless such liability results directly from hazardous substances brought on to the project site by Contractor or its subcontractors or arises out of the negligence or wrongful act of Contractor or its subcontractors. If Contractor encounters a substance on the project site which Contractor believes is a hazardous substance, Contractor shall immediately notify Contracting Party and shall cease work in whole or in part and any delays (and costs arising therefrom) shall be Contracting Party's responsibility.

**12. TERMINATION FOR CAUSE.** Contractor has the right to terminate this Agreement if Contracting Party fails to comply with any of the other provisions herein; provided, further, Contractor may terminate this Agreement in the event of the happening of any of the following: (a) insolvency of Contracting Party or Contractor; (b) any act of bankruptcy by Contracting Party under any provision of the Federal Bankruptcy Act or filing by Contracting Party of a voluntary petition under any law providing for relief from the claims of creditors; (c) the filing of an involuntary petition to have Contracting Party adjudicated as bankrupt under the Federal Bankruptcy Act or for reorganization of Contracting Party under that Act or under any law providing for relief from the claims of creditors which is not vacated within thirty (30) days from the date of such filing; (d) the appointment of a receiver or trustee for Contracting Party or Contractor which is not vacated within thirty (30) days from the date of such appointment; (e) the execution by Contracting Party or Contractor of an assignment for the benefit of creditors; or (f) any other event occurring which under the applicable law would entitle Contractor to cancel and terminate this Agreement. Such termination shall not prejudice any claims that either party may have against the other.

**13. INDEMNITY.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Contracting Party from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Contracting Party shall indemnify and hold harmless Contractor from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, to the extent caused by negligent acts or omissions of Contracting Party, or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

**14. WARRANTIES.** Contractor warrants and guarantees all work and/or materials provided under this Agreement shall be of good quality and workmanship, free from faults and defects and in conformance with this Agreement. Contractor further agrees to make good, at its own expense, any defect in materials or workmanship which may appear within one (1) year of Contractor's substantial completion of its work hereunder. Except as otherwise provided herein, Contractor makes no warranties or representations of any kind, express or implied (including no warranty of merchantability or fitness for a particular purpose) and none shall be implied by law. Contracting Party agrees that oral agreements, statements and representations made by Contractor, its employees or its agents shall not constitute a warranty of any kind.

## Page 2 of 2 of General Provisions

**15. TIME LIMITATION ON CLAIMS.** Any action arising out of Contracting Party's purchase of materials or Contractor's provision of services to Contracting Party, including any action arising under this Agreement, must be commenced within one (1) year after substantial completion of Contractor's work hereunder, and no such action may be maintained which is not commenced within such one-year period.

**16. LIMITATION OF LIABILITY.** Contractor's sole liability and Contracting Party's sole and exclusive remedy for any and all damages, special, direct, incidental or consequential, sustained by Contracting Party or others arising of Contractor's performance of this Agreement shall be limited to correcting defective work. In no event shall Contractor be liable to Contracting Party or any third party for more than the amount of Contractor's proposal, or for any delay damages.

Under no circumstances shall Contractor be liable for (i) damage to or breakage of underground pipes and/or conduits and cables not visible from the surface of the ground nor for any damage to approaches (including sidewalks) from the street to the property line; (ii) damage to the completed pavement surface due to the action of petroleum product spillage; (iii) subgrade failure or utility ditch failure; or (iv) growth of horsetail weed, morning glory, deep-rooted ferns or perennials subsequent to the application of soil sterilization (weed killer) that have not reached maturity prior to such application. Any soil sterilization provided for in this Agreement shall be applied at the rate specified by the manufacturer thereof.

**17. ARBITRATION/ATTORNEYS' FEES.** Contracting Party and Contractor agree that all claims, collections, disputes, or other controversies arising under this Agreement or related hereto, shall be settled by and subject to binding arbitration with a single arbitrator pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). Any such arbitration shall be commenced by delivering to the AAA a written demand for arbitration, and a copy of such demand shall be delivered to the other party. Contracting Party and Contractor agree that the location of any arbitration proceeding commenced with respect to this Agreement shall be at the Seattle, Washington AAA office. In any such arbitration, the prevailing party, as determined by the arbitrator, shall be entitled to its arbitration costs and reasonable attorneys' fees and other costs. Any arbitration award by the arbitrator shall be final and binding on the parties and subject to confirmation and reduction to judgment pursuant to RCW 7.04 in the King County Superior Court.

**18. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, *Delco*

**19. SEVERABILITY.** In the event that any paragraph, part, term, or condition of this Agreement is construed or held to be void, invalid or unenforceable by an arbitrator or court of competent jurisdiction, the remaining paragraphs, parts, terms and conditions of this Agreement shall not be affected and shall remain in full force and effect.

**20. VOLUNTARY CONTRACT.** Each of the parties to this Agreement has carefully read and fully understands the terms and conditions hereof, has had full opportunity to consult with legal counsel regarding its meaning and effect, and is entering into this Agreement freely and voluntarily, through a representative who is fully authorized and empowered to sign on its behalf.

**21. ENTIRE AGREEMENT.** Contracting Party and Contractor intend that the proposal and those terms and conditions on the front page hereof and these General Provisions shall constitute the final, complete and exclusive Agreement between the parties. This Agreement supersedes all other prior or contemporaneous agreements, representations, understandings and promises, oral and/or written, by or between the parties with respect to the subject matter hereof. Contracting Party further acknowledges and agrees that in entering into this Agreement, Contracting Party has not and is not relying upon any contemporaneous agreements, representations, understandings and promises, oral and/or written, made by Contractor. No course of dealings between the parties shall be relevant or admissible to explain, supplement or vary the terms of this Agreement. No amendment or modification of this Agreement shall be effective or binding upon the parties unless made in writing and executed by Contracting Party and Contractor.



**AGENDA ITEM SUMMARY**

**DATE:** 6-3-2013

**DEPARTMENT:** CDD

**DEPT. HEAD SIGNATURE:** MA

**SUBJECT:** Motion to approve the recording of a quit claim deed to transfer Parcel AA of Lot 1A and Parcel AA, Block 1, of the R. Davis Business Center from TerraForm Companies, LLC to the City of Hailey.

**AUTHORITY:**  ID Code 39-4116     IAR \_\_\_\_\_     City Ordinance/Code Title 15  
(IFAPPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

TerraForm Companies, LLC, (developers of the O'Reilly Auto Parts project) approached the City of Hailey to donate Parcel AA of Lot 1A, Block 1, of the R. Davis Business Center to the City for the purpose of a welcome sign or similar project for public benefit. In addition, this parcel is adjacent to the exiting arboretum, maintained by BCRD, and can be used to expand the passive and active recreation activities currently in the vicinity. The Hailey Arts and Historic Preservation Commission is in the process of considering the location for a welcome sign. In addition, the site has been considered for public art and other "welcoming" amenities to the City of Hailey.

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:**

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IFAPPLICABLE)**

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> City Administrator | <input type="checkbox"/> Library             | <input type="checkbox"/> Benefits Committee      |
| <input checked="" type="checkbox"/> City Attorney      | <input type="checkbox"/> Mayor               | <input type="checkbox"/> Streets                 |
| <input type="checkbox"/> City Clerk                    | <input checked="" type="checkbox"/> Planning | <input type="checkbox"/> Treasurer               |
| <input type="checkbox"/> Building                      | <input type="checkbox"/> Police              | <input type="checkbox"/> Sustainability          |
| <input type="checkbox"/> Engineer                      | <input type="checkbox"/> Public Works,       | <input checked="" type="checkbox"/> _Arts & Pres |
| <input type="checkbox"/> Fire Dept.                    | Parks  | Commission                                       |
|  | <input type="checkbox"/> P & Z Commission    | <input type="checkbox"/> _____                   |

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Direct staff to proceed with recordation of the Quit Claim Deed, transferring Parcel AA of Lot 1A, Block 1, of the R. Davis Business Center to the City of Hailey from TerraForm Companies, LLC.

**ACTION OF THE CITY COUNCIL:**

Date : \_\_\_\_\_  
City Clerk \_\_\_\_\_

**FOLLOW-UP:**

\*Ord./Res./Agrmt./Order Originals: Record    \*Additional/Exceptional Originals to:

Copies (all info.): \_\_\_\_\_    Copies (AIS only)  
Instrument # \_\_\_\_\_



AGENDA ITEM SUMMARY

DATE: 6/03/13 DEPARTMENT: Administration DEPT. HEAD SIGNATURE: Mary Cone

SUBJECT

Use Agreement with Intermountain Professional Rodeo Association (IMPRA) for use of the Arena for their Rodeo Finals event on Friday, August 30 and Saturday September 1, 2013. w/ Resolution 2013-47

AUTHORITY:  ID Code  IAR \_\_\_\_\_  City Ordinance No. 840

BACKGROUND:

IMPRA has scheduled a two-day event at the Hailey Arena; this will be second year in a row that the event has been held at the Arena.

The fees outlined in the attached Agreement are based on the Arena Management guidelines set in place by the Hailey City Council.

The producers are working with local organizations to help produce the event.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Budget Line Item # \_\_\_\_\_ Annual Line Item Amount \_\_\_\_\_

The city council expressed, in their Arena Management Policy, that use of the arena should pay for itself in sufficient amount to also pay for maintenance and depreciation of the arena.

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:

Motion to approve Resolution 2013-47, authorizing Arena Use Agreement for IMPRA Rodeo to use the arena on Friday, August 30 and Saturday September 1, 2013.

FOLLOW UP NOTES:

**CITY OF HAILEY  
RESOLUTION NO. 2013-47**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY  
AUTHORIZING THE EXECUTION OF A USE AGREEMENT WITH  
INTERMOUNTAIN PROFESSIONAL RODEO ASSOCIATION (IMPRA), FOR  
EXCLUSIVE USE OF THE RODEO ARENA FOR THEIR SECOND ANNUAL FINALS  
RODEO ON AUGUST 31 AND SEPTEMBER 1, 2013.**

WHEREAS, the City of Hailey desires to enter into an agreement with IMPRA under which IMPRA will be allowed Exclusive Use Of The Rodeo Arena For Their Second Annual Finals Rodeo On August 31 And September 1, 2013.

WHEREAS, the City of Hailey and IMPRA have agreed to the terms and conditions of the Use Agreement, a copy of which is attached hereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO,** that the City of Hailey approves the Use Agreement between the City of Hailey and IMPRA and that the Mayor is authorized to execute the attached Agreement,

Passed this 3RD day of JUNE, 2013.

City of Hailey

---

Fritz X. Haemmerle, Mayor

ATTEST:

---

Mary Cone, City Clerk



# ARENA RESERVATION FORM - large group

Anticipated Fees	
Internal use only	
A/R Account #:	_____
Per Day Use Fee:	\$ _____
Concession:	\$ _____
Ticket Sales:	\$ _____
Sales Tax:	\$ _____
Antic. Total	\$ _____

Event Name: IMBRA  
 Type of Event: Idaho/Wyoming/Utah/Montana (Finals Rodeo)  
 Event Dates: <sup>Sat & Sun</sup> Aug 31 & Sept 1, 2013 Time: From 4 To 7  
 Set-up/Clean-up Dates: Aug 30/Sept 2, 2013 Time: From 4 To 7  
 # of anticipated attendees for event: Total: ~2,000 to 3,000 Per Day: ~1500

### Applicant Information

### Organization Information (if applicable)

Name: IMBRA Name: (same)  
 Email: reed@cooper-larsen.com Email: \_\_\_\_\_  
 (Lisa) rpn4tm@3rivers.net  
 Mailing Address: PO Box 4229 Mailing Address: \_\_\_\_\_  
Pocatello, ID 83205-4229  
 Phone #: cell 208-251-9172 Phone #: \_\_\_\_\_  
Lisa 208-521-7708

### Overview of Fees:

- \$500 per day for use of Arena and bleachers, fee charged for set-up and clean-up days also.
- \$250 per day of use for the concession area
- \$1.00 per tickets priced up to \$20. Additional fee of 5% on tickets priced over \$20

**Arena Use Agreement will be prepared with city staff and approved by City Council -Final use payment due at the time of council approval. Partial refunding of fees for cancellations will be defined in executed Arena Use Agreement.**

Refundable Security Deposit \$500.00 \$ on file  
 1/2 of use fees due at time of reservation (new events only)  
 [# of days 4] ~~(\$)~~ \$500.00/day \$ \_\_\_\_\_

Check this box if you will be using the Concession Area - 15% of ticket sales in lieu of Park use Fees

Total Due to Reserve Arena: none due at this time MHC

I hereby certify the above statements to be true, complete and correct to the best of my knowledge.

Signature of Person Reserving Arena: Paul Larsen Chairman IMBRA

CITY OF HAILEY ■ 115 MAIN ST. S., SUITE H HAILEY, IDAHO 83333 ■ 208-788-4221

## USE AGREEMENT

This Use Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between **CITY OF HAILEY**, a municipal corporation ("City"), **SAWTOOTH RANGERS RIDING CLUB, INC.**, an Idaho non-profit corporation ("Sawtooth"), and **INTERMOUNTAIN PROFESSIONAL RODEO ASSOCIATION**, an Idaho non-profit corporation ("IMPRA").

### RECITALS

A. The City 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, and is authorized to execute this Agreement.

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 and is authorized to execute this Agreement.

C. IMPRA is a duly organized and operating non-profit corporation and rodeo association, operating in Idaho, Wyoming and Utah. Reed W. Larsen is the duly elected and acting president of IMPRA and is authorized to execute this Agreement.

D. City owns real property located at 791 Main Street South, Hailey, Idaho, a portion of which is an outdoor multi-use arena, as depicted on attached **Exhibit A** ("Arena").

E. Sawtooth and IMPRA desire to use the Arena to conduct the IMPRA Rodeo Finals sponsored by IMPRA on August 31, 2013 and September 1, 2013 (the "Event"). IMPRA intends to coordinate the Event with Sawtooth.

F. Subject to the terms and conditions set forth herein, City is willing and agrees to allow IMPRA and Sawtooth to use the Arena and IMPRA and Sawtooth are willing and agree 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. **Reservation.** Hailey agrees to reserve the Arena for the use by Sawtooth and IMPRA for the Event, and Sawtooth and IMPRA agree to use the Arena for the Event. Any party may terminate this Agreement, with cause, provided notice is delivered to the other party six (6) months prior to the Event. Sawtooth and IMPRA shall have the exclusive right to use the Arena for August 30, 2013, at 9:00 a.m. until September 2, 2013, at midnight. Sawtooth and IMPRA shall have the right to inspect the Arena before August 30, 2013, to make arrangements for the Event.

2. **Consideration.** Consideration will be paid on a percentage basis of the paid gate attendance, as follows: (1) IMPRA will receive 45% of the gross revenue received at the gate; (2) the City will receive 15% of the gross revenue received at the gate; and (3) Sawtooth will receive 40% of the gross revenue received at the gate. The City shall be paid its consideration on or before October 1, 2013. The payment shall be accompanied with proof of paid attendance and gross revenue received at the gate. IMPRA shall receive 270 complimentary tickets. Sawtooth shall receive 100 complimentary tickets. IMPRA shall retain the rights for all sponsorship during the Event. Sawtooth, the Hailey Chamber of Commerce, and the IMPRA shall be responsible for all concessions. In the event there are any net losses, IMPRA and Sawtooth shall be solely responsible for any net losses.

3. **Use of Arena.** During the Event, the Arena may be used and occupied by IMPRA and Sawtooth only as a public facility as a rodeo ground facility, as a concession area and as parking, and for no other purpose or purposes without City's prior written consent. During periods of non-use of the Arena during the Event, IMPRA and Sawtooth shall lock and secure all bathrooms, concession areas and security gates within the Arena, and keep members of the general public out of all secured areas. Sawtooth shall be responsible for the watering of the internal dirt portion of the Arena during the Event. IMPRA and 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. IMPRA and 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, which are not normally associated with a rodeo event. IMPRA and Sawtooth agree 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 IMPRA and Sawtooth in writing, provided the City provides IMPRA and Sawtooth with thirty (30) days advance notice of a hearing to consider the proposed rules and regulations and provided any adopted rules and regulations are effective sixty (60) days before the beginning of the Event.

4. **Security Deposit.** IMPRA shall pay as a security deposit the sum of Five Hundred and No/100 Dollars (\$500.00), receipt of which is hereby acknowledged, to be held by City as a security deposit for the faithful performance by IMPRA and Sawtooth of all the terms, covenants and conditions of this Agreement to be kept and performed by IMPRA and Sawtooth during the term of this Agreement. This security deposit does not limit City's rights or IMPRA's and Sawtooth's obligations. IMPRA and Sawtooth understand that all or a portion of the security deposit may be retained by City upon of the Event and that a refund of any portion of the security deposit to IMPRA is conditioned on the following:

- a) IMPRA and 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) IMPRA and Sawtooth shall have remedied or repaired any damage to the Arena to City's satisfaction.
- c) IMPRA and 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 IMPRA and Sawtooth default 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 IMPRA'S AND Sawtooth's default or to compensate City for any other loss or damage which City may suffer by reason of IMPRA's or Sawtooth's default. IMPRA and Sawtooth shall not be entitled to interest on such deposit. If IMPRA and Sawtooth shall fully and faithfully perform every provision of this Agreement to be performed by either entity, the security deposit or any balance thereof shall be returned to IMPRA after IMPRA and Sawtooth have vacated the Arena and after IMPRA and Sawtooth have performed every provision of this Agreement.

**5. Utilities.**

A. City shall pay for all charges for electricity, water, sewer, trash, and cleaning services, rendered or supplied upon or in connection with the Arena during the Event. In the event the expenses for each annual event exceeds \$2,500, Sawtooth shall pay City the difference between the expenses for each annual event and \$2,500 within thirty (30) days of the date of billing for the excess charges. In the event the expenses for each annual event are less than \$2,500, the City is not required to reimburse Sawtooth for any difference and shall be entitled to retain the difference.

B. IMPRA and Sawtooth shall pay or reimburse the City for all services requested by IMPRA and Sawtooth or which are reasonably required by IMPRA and Sawtooth, such as street sweeping and police security and traffic control. The charges incurred in accordance with this paragraph 5(B) shall be paid to the City within thirty (30) days of the date of billing for such charges.

**6. Insurance.** During the Event, IMPRA and Sawtooth shall, at its own expense, maintain in full force, comprehensive liability insurance, including public liability, property damage and contractual liabilities of the IMPRA and Sawtooth, written by a responsible insurance company licensed to do business in Idaho, and insuring IMPRA, 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). 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 Arena or the adjoining property, (whether caused by the negligence or other fault of the City, IMPRA or 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. IMPRA and Sawtooth hereby waive and relinquish any such right. IMPRA and Sawtooth shall request their insurance carriers 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 Event.

7. **Exemption from Liability.** City shall not be liable to IMPRA and 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 IMPRA or Sawtooth, their 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 an amount of time equal to any such prevention, delay or stoppage, except as otherwise provided in this Agreement.

Under the Equine Activities Immunity Act (*Idaho Code §§ 6-1801 et seq.*), the City, IMPRA 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 Event, 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 Event or whether the animals are able to behave safely with the participants during the Event. Further, the City is entitled to certain immunities under the Idaho Tort Claims Act, *See Idaho Code § 6-901 et seq.*

8. **Indemnification and Hold Harmless.** IMPRA and Sawtooth agree 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 IMPRA and Sawtooth during the Event, or arising out of any act or omission or negligence of IMPRA and Sawtooth, their contractors, licensees, agents, servants or employees during the Event, 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 during the Event, 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.** Except as otherwise provided herein, IMPRA and Sawtooth shall, at their 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 Event, 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. In the event any portion of the Arena is damaged by vandalism or similar intentional misconduct during the Event, IMPRA and Sawtooth are not obligated to repair any such damage. IMPRA and Sawtooth shall, at their sole cost and expense, remove all manure from the Arena before the end of the Event or store the manure on site allowing it to decompose but only if allowed by City staff. If City deems it necessary for IMPRA and Sawtooth to make any repairs, City may demand that IMPRA and Sawtooth make them immediately, and if IMPRA or Sawtooth refuse or neglect to commence such repairs and to complete them with reasonable dispatch, City may make or cause such repairs to be made and IMPRA and Sawtooth shall immediately pay City for the costs of such repairs upon receipt of the costs. IMPRA and Sawtooth shall, at their 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.** IMPRA and 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, IMPRA or Sawtooth may terminate this Agreement by providing written notice of intent to terminate. Upon termination, IMPRA and Sawtooth waive any and all claims for damages based on termination of this Agreement and any loss of use.

**12. Defaults.** In the event IMPRA and Sawtooth shall breach their obligations pursuant to this Agreement, then City shall notify IMPRA and Sawtooth of such breach in writing by certified mail, return receipt requested, or hand delivery, and IMPRA and Sawtooth shall correct any failure to pay consideration within three (3) days of receipt of such notification, and IMPRA 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, IMPRA and Sawtooth shall have such additional time to cure the same as may be reasonably necessary, providing IMPRA and Sawtooth proceeds promptly and with due diligence to cure such default after receipt of said notice. In the event IMPRA and Sawtooth fail 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 IMPRA's and 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 IMPRA and 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, 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 IMPRA and Sawtooth to City under any of the terms hereof, and the balance, if any, shall be paid to IMPRA and Sawtooth.

14. **Liens.** IMPRA and 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 IMPRA and Sawtooth.

15. **Assignment and Subletting.** Except as provided herein, IMPRA and Sawtooth shall not assign or sublet this Agreement or any or all of their interest in the Arena without first procuring the written consent of City, which may be made in the City's sole and absolute discretion. IMPRA and Sawtooth are allowed to sublet or allow the use of concession areas within the Arena during the Event without the consent of City; however, IMPRA and Sawtooth shall remain primarily liable for the obligations arising from this Agreement.

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. **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. The parties acknowledge that to execute this Agreement, IMPRA and Sawtooth may need to have a further agreement. When that agreement is created, it will be provided to all parties to this Agreement and then incorporated as an exhibit.

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

CITY:

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: \_\_\_\_\_  
Mary Cone, City Clerk

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

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

By: \_\_\_\_\_  
William Bobbitt, its President

Dated: \_\_\_\_\_

**IMPRA:**  
INTERMOUNTAIN PROFESSIONAL  
RODEO ASSOCIATION, an Idaho non-profit  
corporation

By: \_\_\_\_\_  
Reed W. Larsen, Chairman

Dated: \_\_\_\_\_

