

AGENDA ITEM SUMMARY

DATE: 06/17/2013 DEPT.: Administration DEPT. HEAD SIGNATURE: HD

SUBJECT:

New Business: Request from Professional Bull Riders Hailey Classic organizer for waiver of noise ordinance to allow concert to follow the PBR event; extension of amplified sound two hours past 10:00 p.m.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code Hailey MC 9.04.030
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Hailey Municipal Code Section 9.04.030 provides that:

1. Outdoor amplified sound may be permitted with an approved Special Events permit, an approved park reservation or an approved amplified sound permit. Permitted outdoor amplified sound shall be limited to the hours between 10:00 a.m and 10:00 p.m.

The Hailey City Council approved an Arena Use Agreement on May 6, 2013, which agreement allows a bull riding event and concert on Friday, July 26, 2013. The agreement does not specify the time of the event. The organizer has booked a nationally renowned band. Over 300 tickets have been sold with an 8:00 p.m. PBR Classic start time. The bull riding event will last 1½ - 2 hours, and the concert will last 1½ - 2 hours.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

The organizer expects, with the combination PBR and Concert, to approach sell out for the second annual event. Hailey would collect approximately \$4000 to cover expenses, if sold out. Last year Hailey collected approximately \$1500.

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:

Options:

Motion to deny waiver (organizer would likely move the concert to the Community Campus or another indoor venue)

Motion to approve waiver as presented.

Motion to approve waiver with modification (organizer would reproduce promotional material to begin at 7:00 p.m.)

ACTION OF THE CITY COUNCIL:

Date _____
City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: _____ *Additional/Exceptional Originals to: _____
Copies (all info.): _____ Copies
Instrument # _____

AGENDA ITEM SUMMARY

DATE: 06/17/2013 **DEPT.:** Administration **DEPT. HEAD SIGNATURE:** HD

SUBJECT:

New Business: Request from World Music Festival organizer Danny Walton for waiver of fees for an Arena event planned for Saturday, July 20, 2013

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Hailey has **not** adopted an ordinance governing fees for use of the Arena. However, general policy guidelines were adopted by the council with the intention of allowing some latitude to help bring events to Hailey's Arena. The fees, after being agreed upon, are then stipulated in an agreement between Hailey and the event producer.

To date, Hailey has waived fees for only one small local high school group, as the group performed its own cleaning and after-event maintenance of the facility. Attached are the guidelines for large and small groups.

Danny Walton has been working with city staff for months to organize a World Music Festival on July 20, 2013. He previously asked the council, through staff, for an extension of amplified sound curfew past 10:00 p.m., and was denied. Because of the cost of bringing several bands to a full-day music festival, he is now asking for a waiver of fees. Danny plans to be present to make this request of the city council.

The list of fees include:

1. Security Deposit - \$500
 2. Per-Day Use (includes set up and take-down days - \$500 per day.
 3. Concession Space Use - \$250
 4. Repair of damage and utilities/cleaning in excess of \$500.
 5. Security and EMS standby billables - \$40/hour and \$35/hour, respectively
 6. Other costs excessively incurred by the City of Hailey.
-

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

The organizer expects, with the combination PBR and Concert, to approach sell out for the second annual event. Hailey would collect approximately \$4000 to cover expenses, if sold out. Last year Hailey collected approximately \$1500.

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:

- Options:
- Motion to deny waiver of fees.
 - Motion to approve waiver as presented.
 - Motion to approve waiver with modifications.
-

ACTION OF THE CITY COUNCIL:

Date _____
City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: _____ *Additional/Exceptional Originals to: _____



ARENA RESERVATION FORM - large group

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

Event Name: _____
 Type of Event: _____
 Event Dates: _____ Time: From _____ To _____
 Set-up/Clean-up Dates: _____ Time: From _____ To _____
 # of anticipated attendees for event: _____ Total: _____ Per Day: _____

Applicant Information

Organization Information (if applicable)

Name: _____

Name: _____

Email: _____

Email: _____

Mailing Address: _____

Mailing Address: _____

Phone #: _____

Phone #: _____

Overview of Fees:

- \$500 per day for use of Arena and bleachers (per day 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.

- Security Deposit is required with this Arena Reservation Form.
- Per Day Use Fees are due at the time of council approval of the Agreement.
- Ticket Fees are due within 30 days following the event.
- Partial refunding of fees for cancellations will be defined in Arena Use Agreement.

Refundable Security Deposit **Due to Reserve Arena** \$500.00 \$ _____

Check this box if you will be using the Concession Area –

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

Signature of Person Reserving Arena: _____

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In an effort to invite a variety of weekend events, and to assist event producers as needed, an individual agreement for each event will be required, with some flexibility based on event producer's needs to elements outlined below.

1. The event shall not cause a public safety hazard to the remainder of the city by interrupting emergency response by police, fire and ambulance.
2. The set-up and removal of the facilities needed for the event and operation of the event shall be conducted, designed, constructed, operated and maintained to be harmonious and appropriate with the Arena facility.
3. The event shall not substantially interrupt the safe and orderly movement of traffic contiguous and near its venue. A parking and shuttle plan shall be required as part of an event agreement.
4. The event shall not be reasonably likely to cause injury to persons or property, to result in disorderly conduct or to create a disturbance.
5. Adequate steps shall be provided for protection of persons and property, which may include proof of general liability insurance coverage in the minimum amount of one million dollars naming the city as an additional named insured.
6. Adequate trash receptacles and/or dumpsters, portable toilets, recycling containers and crowd control measures shall be provided. The city will evaluate each event and be allowed broad discretion on the number of trash receptacles and/or dumpsters and portable toilets required. For high impact events, such as concerts, the applicant shall provide, at a minimum, one six yard dumpster per 500 people, one permanent or portable bathroom per 100 people, unless the applicant can demonstrate that modification of the requirements is justified. In addition, the applicant shall be responsible for providing all traffic and pedestrian control devices, such as cones, barricades, flags, signs and ropes.
7. If required, a security plan shall be approved by the Hailey chief of police, an emergency medical care and ambulance support plan shall be approved by the Hailey fire chief, a traffic, parking and busing plan for the event shall be approved by the Hailey fire chief and police chief, and/or a lighting plan for the special event shall be approved the Hailey lighting administrator.
8. The applicant shall agree to indemnify, defend and hold harmless the city and its officers and employees from any and all demands, claims or liability of any nature, caused by or arising out of, or connected with the special event.
9. The applicant has made no false statements or misrepresentations upon any present or former application for an event agreement.
10. The applicant has not substantially violated any provision of city, state or federal laws, in conducting any previous event.
11. The event is subject to other applicable city, state, federal or other governmental rules, regulations or laws, including but not limited to regulations pertaining to glass containers, signage, lighting, and noise.

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ARENA RESERVATION FORM - small group

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

Event Name: _____
 Type of Event: _____
 Event Dates: _____ Time: From _____ To _____
 Set-up/Clean-up Dates: _____ Time: From _____ To _____
 # of anticipated attendees for event: Total: _____ Per Day: _____

Applicant Information

Organization Information (if applicable)

Name: _____

Name: _____

Email: _____

Email: _____

Mailing Address: _____

Mailing Address: _____

Phone #: _____

Phone #: _____

Overview of Fees:

	<i>Reservation fee</i>	
	<i>Check one</i>	
Group event less than 50 people	\$25.00	<input type="checkbox"/> _____
Group event with Livestock	\$100.00	<input type="checkbox"/> _____
Youth Community Event (over 50 people)	\$250.00	<input type="checkbox"/> _____

- \$25 reservation fee.
- \$50 restroom opened (apply to Groups <50 and Groups with Livestock only)
- \$125 Concession opened (applies to Youth Community Event)
- 6% State Sales Tax on use fees (not on Security Deposit)

Check this box if you will be using the Concession Area –

Total Due to Reserve Arena: _____

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

Signature of Person Reserving Arena: _____

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

Guidelines for Small Group Reservations

Memo from Tom Hellen PW Director to City Council on April 25, 2011

At the April 12, 2011 Parks & Lands Board meeting a decision 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.

AGENDA ITEM SUMMARY

DATE: 06/17/2013 DEPT.: Arts Commission/ Administration DEPT. HEAD SIGNATURE: HD

SUBJECT:

New Business: Introduction of Bob Wiederrick's donation of portable art, and process by which City of Hailey accepts such donations.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code Hailey MC 3.08
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Hailey Municipal Code Section 3.08 provides that the City of Hailey may accept donations of public art, but it does not provide a process for that. The 2002 Hailey Parks and Trails Master Plan does contemplate a process through the Hailey Arts Commission (The HAC was not yet established at the time the master plan was written). The Hailey Arts Commission is interested in establishing such a process, but did not have that process fully vetted and completed when, at June's monthly commission meeting, a donation of portable public art was presented by Bob Wiederrick. The Hailey Arts Commission would permission to display the art at city hall even though the Acceptance of Art policy and process is still pending.

The process is outlined in the attached draft policy, which establishes criteria for the selection of public art. The process culminates with an agreement between the city and the artist which gives full ownership of the art to the city, thereby allowing the city to place, use, maintain, and decommission the art at will, but through which the artist retains her/his copyright. Also attached is a draft agreement, which is not ready for adoption. Both attachments need to be discussed and vetted by the Arts Commission in their July meeting, and will be brought back to the city council for approval thereafter.

The portable art donation from Wiederrick consists of a photograph taken by Chris Simms of a bicycle crafted by Bob Wiederrick, framed by Blue Heron. The photo is entitled **Hailey at Night**. The Hailey Arts Commission is seeking general guidance from the Hailey City Council regarding the process and the donation, and is interested in hanging the art at City Hall prior to the process being fully adopted.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: The metal sculptured bicycle depicted in the photograph has been offered for sale to the City on several occasions by Bob Wiederrick. At the June HAC meeting, Wiederrick noted that the new owner of Hailey Sturtevant's is willing to contribute \$3000 to the purchase of the sculpture if the city is willing to make Wiederrick an offer and locate the sculpture at the northwest corner of Carbonate and Main.

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 and give guidance

ACTION OF THE CITY COUNCIL:

Date _____
City Clerk _____

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: *Additional/Exceptional Originals to: _____
Copies (all info.): Copies
Instrument # _____

POLICY - PUBLIC ART & ART DONATIONS

Public art should be *selected* rather than *accepted* by our community. A public art collection should be a well-planned and coordinated selection of pieces, rather than a non-cohesive collection of gifts chosen by donors. The **2002 Hailey Parks, Lands and Trails Master Plan** recommends a Public Arts Commission to implement and oversee a Hailey Public Arts Program. Review of artwork gifts should be conducted by the Hailey Arts Commission.

Many Public Art Programs include the commission, purchase and installation of artworks. Programs commission works from artists and maintain the works of art in a municipal art collection, which is displayed in city buildings and on city property. Artwork commissioned by this program may be created either as an integral part of an eligible construction project or at any other city-owned site.

Public Art Programs include:

- May be funded through a "one percent for art" program (1% of municipal public works projects' budgets are dedicated to public art)
- Permanently-Sited Major Indoor and Outdoor Artworks
- Artworks for a Portable Works Collection
- Design Team Projects
- Special Projects

The City of Hailey's formal public art collection currently consists of several items, including its inaugural Hailey Public Library Mallory Collection. The City of Hailey recognizes the value of public art, and would like to encourage more in Hailey, especially in the Central Business District and other public areas.

Gifts of public works of art are occasionally offered as donations to the City of Hailey; gifts are an important part of providing much-needed assets as well as establishing a visual artwork collection for the community. In order to ensure the quality of the public art collection, the Hailey Arts Commission has established a Gift Review Policy.

The City has limited funds to protect, maintain, preserve and conserve elements or artworks. Therefore a careful review process has been established to evaluate proposed gifts to the City. Public elements, such as fountains, public furniture, monuments or other facilities, should be part of a capital improvements plan, and noted in a "gift catalogue". In the absence of a capital improvements plan or gift catalogue, gifts can be reviewed for compatibility by the Hailey Arts Commission for the purpose of making a recommendation to the Hailey City Council regarding acceptance of the gift.

The intent of the review is to ensure that public elements and public art become an asset to public places and do not discourage or disrupt use of the surrounding public space, or threaten the health, safety or welfare of the public.

Community-Generated Projects

Artworks generated through community process may be formally accessioned into Hailey's City Art Collection. Artworks may be offered to the City Art Collection as a component of community-generated development projects. The Hailey Arts Commission may require a signed maintenance agreement or establishment of an endowment for maintenance, preservation and conservation in perpetuity. The Hailey Arts Commission strongly encourages community groups to raise funds and/or make specific plans for the maintenance of such works.

Public Art Review Guidelines

The Hailey Arts Commission reviews each proposed gift of art on the basis of the criteria below. Community groups or individual donors proposing gifts will be provided with the gift policy in advance in order to ensure that all these criteria are addressed. The Hailey Arts Commission may require evidence that these issues have been satisfactorily resolved before making a recommendation to the Hailey City Council regarding a proposed gift.

1. Aesthetic Quality

Is the proposed gift an artwork with strong aesthetic merit? Criteria for aesthetic quality include:

- Relationship of artwork to other works in the City Art Collection as a whole
- Artist's credentials, recognition and local significance

2. Site

What type of site is proposed for the artwork? Siting criteria include:

- Written evidence that location of artwork on the proposed site has been approved by the City department that occupies the site

3. Relationship to the Collection as a Whole

How is the proposed gift compatible or incompatible with the City of Hailey's public art collection?

Criteria for compatibility include:

- Does the artwork contribute to the diversity and breadth of the City Art Collection?
- Is the artist's work already adequately represented in the City Art Collection?

4. Community Process

Artwork gifts require public involvement and review. The following requirements should have been met:

- For community-based projects, artist selection must have been based on an open competition or a process that demonstrates substantial community involvement (e.g. review and discussion by immediately-surrounding community)
- If the artwork gift is a result of direct selection by the donor, does it contribute to the diversity of the City's collection?

5. Technical Specifications and Feasibility

Artworks proposed for installation on City property must be durable and meet City safety concerns. The Hailey Arts Commission may review detailed construction/fabrication drawings consisting of site plan, elevation and section view of artwork.

The Committee may require additional support materials such as text verbally describing artwork and specifications, structural and engineering drawings, models or presentation drawings.

6. Budget and Contractual Information

Prior to acceptance of a proposed artwork, the Hailey Arts Commission may review the adequacy of its proposed budget and funding source. Criteria include:

- Artists fee must be equal to at least 20% for the artwork cost or must have been waived by the artist/artist's estate in writing.
- Payment for artwork and its installation must be guaranteed by the provider through a valid, signed contract with the artist.

7. Durability and Routine Maintenance

Proposed artwork gifts may be required to be accompanied by a maintenance plan prepared by and/or reviewed by an artwork conservator. It is expected that proposed permanently sited artwork gifts will last a minimum of 30 years. Criteria include:

- Explanation of expected life span of artwork in public non-archival exhibition settings
- Description of durability of similar artworks in the same material(s) attained
- Explanation of environmental conditions and suitability of artwork materials to the conditions of its proposed display.

8. Long Term Maintenance

The Hailey Public Works Department is responsible for overseeing the maintenance of artworks in the City Art Collection. A maintenance plan for artwork gifts should be provided as part of the donation proposal. This plan should be provided by the artist or a qualified conservator.

Maintenance criteria that should be met include:

- For gifts of "portable" artworks: handling and installation requirements (e.g. instructions for personnel and equipment required for moving the work)
- Written permission from the artist/artist's estate for work by a qualified conservator. NB: Reasonable efforts will be made by the Hailey Arts Commission to contact living artist(s) in the event of need for major restoration. General maintenance work will be conducted as necessary without such formal notification.
- Written permission granted by the artist for removal of the work due to possible changes in the future use of the site

9. Vandalism and Safety

Proposed artwork gifts must consider potential vandalism and public safety issues. Proposed gifts must demonstrate consideration of the following criteria:

- Describe elements of the artwork that might be prone to vandalism and how this potential for vandalism has been addressed
- Describe how graffiti vandalism has been addressed

10. Timeline

If a proposed gift is not completed within the timeline originally established, or if significant changes (either conceptual or financial) to the proposed work occur, it may be reviewed again by the committee. The Hailey Arts Commission is authorized to request that a proposal be resubmitted for review.

Recommendations on Acceptance and Rejection of Gifts of Art

The Hailey Arts Commission makes a recommendation on a course of action regarding each proposed gift or project. Upon approval by the Commission, the recommended acceptance will be forwarded to the Hailey City Council.

De-accession Review

Gift artworks will be reviewed on a regular basis and de-accessioned if necessary, through steps in accordance with national standards for de-accessioning works of art.

City of Hailey
Acceptance of Public Art

THIS PUBLIC ART ACCEPTANCE AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2013, by and between the CITY OF HAILEY, an Idaho municipal corporation ("Hailey") and _____, an individual ("Artist").

RECITALS

- A. Hailey is a political subdivision of the state of Idaho. Fritz X. Haemmerle is the duly elected and acting mayor of Hailey and has been authorized to execute this Agreement. .
- B. The Artist desires to provide finished artwork to the City of Hailey.
- C. The Hailey Arts Commission has reviewed the art pursuant to its Policy on Art Donations and Public Art.
- F. The Hailey Mayor and City Council approve of the City's acceptance of the portable public art presented by Bob Wiedderick, a photograph of a bicycle sculpture in Hailey's wintery downtown entitled *Hailey at Night*.
- G. Subject to the terms and conditions of this Agreement, the parties wish to enter into this agreement by which Hailey accepts the art and the artist(s) relinquish control of the art, other than its copyright.

AGREEMENT

NOW THEREFORE, Hailey and the Artist, for and in consideration of the recitals, mutual promises and covenants hereinafter set forth, do hereby agree as follows:

1. Intellectual Property Rights and Ownership of Rights.
 - a. Artist's Rights. The Artist retains all rights under the Copy right Act of 1976, 17 U.S.C. §101 *et seq.*, as the sole author of the Artwork for the duration of the copyright.
 - b. Reproduction Rights. In view of the intention that the City's art collection shall be unique, the Artist shall not make any additional exact duplicate reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of Hailey. However, nothing shall prevent the Artist from creating future artwork in the Artist's manner and style of artistic expression. The Artist grants to Hailey and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner. The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to Hailey in substantially the

following form: "An original Artwork in the public art collection of the City of Hailey." If Hailey wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive. Hailey is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

c. Installation, Use, and Discontinuation of Use. The Artist, by donating artwork to the City of Hailey, relinquishes any right to direct the location, use, or discontinuation of use by the City of Hailey of the artwork.

2. Miscellaneous Provisions.

A. Notices. All notices to be served pursuant to this Agreement or which are served with regard to this Agreement shall be sent by certified mail, return receipt, to the parties at the following addresses:

City of Hailey
115 Main Street So.
Hailey, Idaho 83333

Bob Wiederrick
Wiederrick Custom Metalworks
Hailey, Idaho 83333

All notices of changes of addresses shall be sent in the same manner.

B. Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

C. Compliance With Laws. Artist, its agents and employees shall comply with all federal, state and local laws, rules and ordinances.

D. Non-assignment. This Agreement may not be assigned by or transferred by the Artist, in whole or in part, without the prior written consent of Hailey.

E. Entire Contract. This Agreement contains the entire contract between the parties hereto and shall not be modified or changed in any manner, except by prior written contract executed by both parties hereto.

F. Succession. This Agreement shall be binding upon all successors in interest of either party hereto.

G. No Third Party Beneficiaries. This Agreement shall not create any rights or interest in any third parties.

H. Law of Idaho. This Agreement shall be construed in accordance with the

laws of the State of Idaho.

I. Severability. If any clause, sentence, or paragraph of this Agreement is held by a court of competent jurisdiction to be invalid for any reason, such decision shall not affect the remaining portions, and the parties do now declare their intention that each such clause, sentence, or paragraph of this Agreement is a separate part hereof.

J. Preparation of Contract. No presumption shall exist in favor of or against any party to this Agreement as a result of the drafting and preparation of the document.

K. No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

L. Attorney's Fees. In the event either party hereto is required to retain counsel to enforce a provision of this Agreement, to recover damages resulting from a breach hereof or if either party defaults in the performance of this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable attorney's fees incurred herein or on appeal or in bankruptcy.

M. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

IN WITNESS WHEREOF, the parties hereto have caused this Art Design Contract to be executed on the day and year first written above.

CITY OF HAILEY

ARTIST

Fritz X. Haemmerle, Mayor

Bob Wiedderick

ATTEST:

Mary Cone, City Clerk

