

AGENDA ITEM SUMMARY

DATE: 06/27/2011 DEPARTMENT: Administrative/Planning DEPT. HEAD SIGNATURE: HD

SUBJECT: Consideration of Hailey Rodeo Park Phasing Plan identifying design review elements tied to certificate of occupancy for the multi-purpose arena, and owner's discussion of other project component timelines, including skateplaza, interpretive exhibit design & interpretive center construction schedule, public art, and landscaping.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Hailey's Community Development Director has advised the owner/developer of the Hailey Rodeo Park Project that Design Review obligations are met sufficiently for a Certificate of Occupancy to be released on the Arena (see attached).

The City Council, acting as Owner/developer, should consider the phasing plan recommended by staff for the remaining elements of the park.

1. Preparatory Sitework and Utilities installation – Complete
2. Multi-use Event Arena – Complete as of June 30, 2011
3. Skateplaza - Underway, to be completed by October 30, 2011.
4. Interpretive Center Exhibits Design – Underway, to be completed by September 30, 2012
5. Interpretive Center Building Permit - Underway and planned to dovetail with Exhibit Design and LEED components, to be completed by January 31, 2012
6. Interpretive Center Bidding – to be completed by March 31, 2012
7. Interpretive Center Construction – April 1 through October 30, 2012
8. Public Art, Interpretive Gallery Installation, and Final Sitework and Amenities – to be installed as phases reach completion, with some pieces to be temporarily installed earlier and moved to their permanent location upon phase completion.
9. Ice Rink Facility – to be determined by Hailey Ice, Inc.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss and approve or amend plan.

FOLLOW-UP/COMMENTS:

*

MEMORANDUM

TO: Heather Dawson, City Administrator

FROM: Beth Robrahn 

RE: Rodeo Arena – Certificate of Occupancy (CO) review

CC: Michael Bulls, Architect
Tom Hellen, Public Works Director
Dave Ferguson, Building Official
Ned Williamson, City Attorney

DATE: June 14, 2011

The Findings of Fact for design review approval of the Hailey Rodeo Grounds dated March 29, 2010 listed several conditional of approval. A subsequent submittal with revised Site Plan and Electrical Lighting plans was issued by R/L/B and reviewed by the City on December 20, 2010.

We have discussed that the project could be divided into several elements, or phases –utilities, concrete and paving, parking, arena, interpretive center, skate park, ice rink, site amenities (benches, bike racks, etc), landscaping and public art. The intent of this CO review is to have the conditions of design review approval specific to the arena completed, thereby enabling the issuance of a certificate of occupancy for the arena while the other phases and the associated conditions of approval are each completed at later dates.

The conditions of design review approval specific to the arena that were not met prior to issuance of the building permit are addressed below.

Item 6.f. – All roof projections and roof-mounted mechanical equipment shall be screened from on-site parking and adjacent public streets and properties. No equipment is mounted on the roofs of the South Bleacher Buildings or North Bleacher Buildings, only ducts. After our site visit last week it was determined the ducts have a low enough profile and height and blend well into the bleachers, that they are adequately screened by design and placement and additional screening is not necessary.

Item 6.g – At least one (1) bench shall be designed and installed to City Standards along each side of the entrance to the Rodeo Park, adjacent to the sidewalk. No benches are currently scheduled for each side of the entrance to the Rodeo Park. Currently, the revised site plan does not include sidewalk along the east side of the entrance. The bench location can be changed to the west side of the entrance and be considered a minor modification to the design review approval. Installation of a bench should be incorporated into the design of the Skate Park phase of the project to meet this condition of approval.

Item 6.j.(1) - The bike racks and their proposed location shall comply with the bike rack City Standards and some of the bicycle spaces required shall be provided adjacent to the Arena or the Interpretive Center. Bike racks to accommodate 28 bicycles are required; this amounts to 14 Inverted U racks. The arena parking space requirement is 11% of the total; 3 bike parking spaces (2 racks) are associated with the arena. Five bike racks are indicated on the site plan at the northwest corner of the Rodeo Arena adjacent to the transformer and arena entrance gate. We agreed these racks could be installed as part of the site amenities phase and a better location or configuration may be found as the other phases of the project are constructed. We discussed arranging for temporary racks for the 2011 July 4th Rodeo Event to the north of the ice rink site or on Nelson Field.

Item 6.j.(2) - All ground-mounted equipment shall be adequately screened from surrounding properties. The Ice Rink and Arena trash receptacles shall be located within a surrounding fence or wall and the transformer located at the northwest corner of the property shall be adequately screened from surrounding properties. The arena trash receptacle located at the southeast corner will be provided with surrounding fencing components intended to screen the receptacle from surrounding properties and Main Street. The arena trash receptacle originally planned for the northeast corner was eliminated from the plan to allow for the expansion of the southeast enclosure to be expanded to accommodate recycling which will mitigate the need for an additional dumpster on the northeast corner.

The existing power transformer that provides service to the Rodeo will be screened with panels along the south side (between the post and the entry gate). This screening will be adequate screening from Nelson Field. Screening of the transformer on the west and north sides is not possible due to Idaho Power clearance requirements from the transformer (10 ft) and the proximity of the gate opening. We discussed planters serving as some possible screening in the future in addition to using the transformers as an opportunity for public art.

Item 6.k – All interior lot lines, required to be vacated in accordance Section 4.13.8, shall be vacated prior to the issuance of a Certificate of Occupancy. Final Plat is scheduled for City Council approval on June 27, 2011.

Item 6.l – All materials proposed for storage adjacent to the alley shall remain screened in an appropriate manner. No materials are currently proposed for storage adjacent to the east Alley.

Item 6.m – The City shall receive and accept the quit claim deed from the School District and a plat removing the interior lot lines and creating three (3) lots shall be recorded prior to a Certificate of Occupancy. Final Plat is scheduled for City Council approval on June 27, 2011.

Hailey Rodeo Park Conditions of Design Review Approval

	Condition of Approval	Phase	Status
i)	All new and existing exterior lighting shall comply with the Outdoor Lighting Ordinance and shall not cause light trespass and shall protect adjacent properties from glare and excessive lighting. All exterior and parking area lights shall be placed on timers to turn off after facility hours. No lights shall be installed that would illuminate the skate park area.	all	
j)3	All Federal Aviation Administration requirements shall be met and Form 7460 shall be submitted.	all	form submitted
j)	A revised site-plan shall be submitted to the Planning Department and approved on the Commission's consent agenda showing the following requirements:	all	complete
j)1	The bike racks and their proposed location shall comply with the bike rack City Standards and some of the bicycle spaces required shall be provided adjacent to the arena or interpretive center.	all	complete
k)	All interior lot lines, required to be vacated in accordance Section 4.13.8, shall be vacated prior to the issuance of a certificate of occupancy.	all	Final Plat is scheduled for City Council approval on June 27, 2011.
m)	The City shall receive and accept the quit claim deed from the School District and a plat removing the interior lot lines and creating three (3) lots shall be recorded prior to a certificate of occupancy.	all	Final Plat is scheduled for City Council approval on June 27, 2011.
d)	Any future signs shall be reviewed by the Parks and Lands Board, prior to applying for a sign permit (if required) or displaying.	amenities	sign permit
g)	At least one (1) bench shall be designed and installed to City Standards along each side of the entrance to the Rodeo Park, adjacent to the sidewalk.	amenities	
e)	The guardrail on top of the bleaches, as well as all other portions of the arena shall be no higher than 35 feet from record grade.	arena	complete
i)1.i.	Lights shall only be on or used during events.	arena	notice to applicant
i)1.ii.	The 60 foot high lights shall have a maximum 110,000 lumens light bulb.	arena	

Hailey Rodeo Park Conditions of Design Review Approval

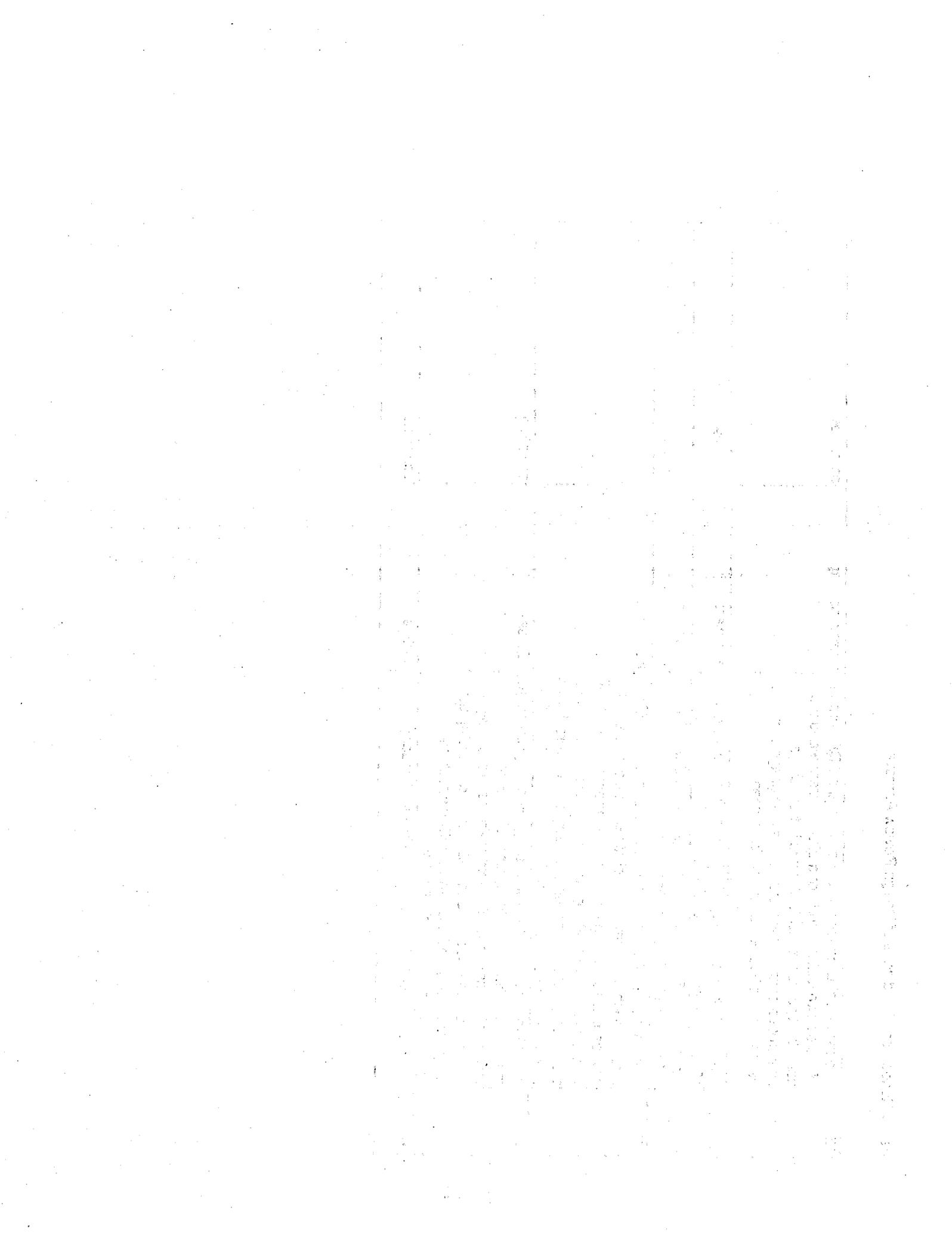
j)3	An alternative material to chain link shall be used on-site for the fence and bleacher guardrails at the arena.	arena	complete
j)8	The arena's east bleachers shall be relocated outside of the required setback three (3) additional feet, to provide the required six (6) foot setback from the alley.	arena	complete
j)9	The announcer's booth shall be moved to a location that allows the announcer to look down into the bucking shoots, in a manner that does not obscure the view of the animals exiting the shoots from the booth.	arena	complete
i)	All materials proposed for storage adjacent to the alley shall remain screened in an appropriate manner.	arena	No materials are currently proposed for storage adjacent to the east
a)ii	Any change in use or occupancy type from that approved at time of issuance of Building Permit may require additional improvements and/or approvals. Additional parking may also be required upon subsequent change in use, in conformance with Hailey's Zoning Ordinance at the time of the new use.	arena, ice rink	notice to applicant
f)	All roof projections and roof-top mechanical equipment shall be screened from on-site parking and adjacent public streets and properties.	arena, ice rink	arena - complete
j)2	All ground-mounted equipment shall be adequately screened from surrounding properties. The ice rink and arena trash receptacles shall be located within a surrounding fence or wall and the transformer located at the northwest corner of the property shall be adequately screened from surrounding properties.	arena, ice rink	arena - complete
a)i	The handicap accessible parking stalls should be located on the shortest accessible route to the facilities main entrance (see IBC section 1106.6).	concrete and paving	complete
b)ii	Parking area surfacing, construction, and drainage shall meet City Standards.	concrete and paving	complete
j)4	A concrete walkway shall be installed between the western elevation of the ice rink and the parking area adjacent to it, in addition to the landscaping proposed there.	ice rink	

Hailey Rodeo Park Conditions of Design Review Approval

h)	<p>Moisture sensors shall be installed to ensure that all automatic irrigation systems within the Rodeo Park don't water landscaped areas in excess of what is necessary. The use of overhead spraying irrigation systems shall be minimized to the greatest extent possible.</p>	landscaping	
n)	<p>A revised landscaping plan shall be developed with input and review from the Tree Committee and Parks and Lands Board, addressing both of their concerns listed in the attached memos both dated March 5, 2010. After both groups have reviewed the revised plan, it should be submitted to the Planning Department to be reviewed on the Commission's Consent Agenda, prior to a certificate of occupancy.</p>	landscaping	<p>The proposed Skate Park expansion project is a design build component that has been awarded to Dreamland Skateparks, LLC. This landscaping design and installation for the Skate Park area is included in the contract scope of work. This work includes a significant portion of the overall landscaping for the Hailey Rodeo Park. The remaining areas will be proposed to compliment the Skate Park design once the final</p>
o)	<p>All trees proposed for removal, excluding aspens, shall be individually evaluated by a professional arborist for health, vigor, and compatibility with utilities before removal. If relocation is possible, retaining the relocated trees on-site is preferable. Otherwise the trees should be relocated to a public place determined by the City to be an appropriate and cost effective location. The arborist review shall occur prior to submitting a revised landscape plan.</p>	landscaping	
b)iii	<p>The city shall maintain the parking area in good condition without holes and free of dust, trash, and other debris.</p>	na	notice to applicant
i)2.i.	<p>A 70 watt metal halide shall be used, replacing the proposed 175 watt metal halide in all parking lights.</p>	parking	

Hailey Rodeo Park Conditions of Design Review Approval

j)5	The asphalt shall be stripped to connect the ADA corners of the sidewalk at the north end of the entrance and the northwest corner to the ADA slope in front of the interpretive center. Pedestrian crossing signage shall also be installed at both locations, on both sides.	paving, parking	complete
p)	The Arts Commission shall be involved in the early design of all future public art proposals.	public art	ongoing
j)6	Final details of the proposed addition to the Skate Park, following the Parks and Lands Board Review.	skate park	
j)7	A more formal and primary Skate Park entrance on Main Street, which accommodates skate boards shall be provided, in addition to the stone path proposed along the west end of the lot and the interior entrance to the north of the skate park. The location and design shall be reviewed by the Parks and Lands Board.	skate park	
b)j	The developer shall install insulating material (blue board insulation or similar material) for each and every individual water service line and main line in the alley, to the east of the Rodeo Arena, between and including the subject property and the nearest public street, as recommended by the City Engineer.	utilities	complete
c)	All new utilities to the site shall be installed underground.	utilities	complete



AGENDA ITEM SUMMARY

DATE: 6/27/2011

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Corrected Memorandum of Ground Lease

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

I have been advised that certain dates on the Memorandum of Ground Lease for the River Street property were not correct on the memorandum. To correct the dates, I have prepared a Corrected Memorandum of Ground Lease.

Ned

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

Case # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

_____ City Attorney	_____ Clerk / Finance Director	_____ Engineer	_____ Building
_____ Library	_____ Planning	_____ Fire Dept.	_____
_____ Safety Committee	_____ P. & Z Commission	_____ Police	_____
_____ Streets	_____ Public Works, Parks	_____ Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Make a motion to approve the Corrected Memorandum of Ground Lease and authorize the council president to sign.

FOLLOW-UP REMARKS:

CORRECTED MEMORANDUM OF GROUND LEASE

THIS CORRECTED MEMORANDUM OF GROUND LEASE is made this ____ day of June, 2011, by and between the City of Hailey, Idaho, a municipality and political subdivision of the State of Idaho ("City") and River Street Apartments Limited Partnership, an Idaho limited partnership ("River Street").

NOTICE IS HEREBY GIVEN that the City and River Street entered into a certain Ground Lease dated the 27th day of January, 2011 ("Lease"), whereby the City and River Street agreed to lease unimproved property located 731 River Street North, Hailey, Idaho.

The Lease is binding upon the heirs, successors and assigns to the parties thereto and constitutes a covenant running with the real property more particularly described as Lot 2A of a Replat of LOT 2A AND PARCEL A, SUTTON SUBDIVISION, BLAINE COUNTY, IDAHO, according to the official plat thereof, recorded December 8, 2006, as Instrument No. 542685, records of Blaine County, Idaho.

A copy of the Lease is available for inspection during regular business hours at the Hailey City Hall, Hailey, Idaho.

WITNESS, this Corrected Memorandum of Ground Lease is executed on behalf of the City of Hailey, Idaho, this ____ day of June, 2011.

CITY OF HAILEY

By _____
FRITZ X. HAEMMERLE, Council President

RIVER STREET APARTMENTS
LIMITED PARTNERSHIP,
an Idaho limited partnership

By: River Street Senior Housing, LLC,
an Idaho limited liability company, General Partner

By: _____
Michelle Griffith
Manager

By: _____
Gregory A, Urrutia
Manager

AGENDA ITEM SUMMARY

DATE: 06/22/2011 **DEPT.:** Hailey Arts Commission / Admin **DEPT. HEAD SIGNATURE:**

SUBJECT:

Hailey Rodeo Park
Public Art Fabrication Agreements

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Three agreements are attached, all for the fabrication of artwork by Bill Amaya, Ellen Nasvik and Troy Passey. All of the artwork in these three agreements is related to the arena/interpretive center and skate park. These new agreements replace the original design contracts with the artists, and incorporate materials costs, all within the originally allocated public art budget.

Tom Teitge is currently designing a mural for the north facing exterior wall of the Interpretive Center. When design is complete, a similar public art fabrication agreement will be brought forth for this mural.

The Hailey Ice Facility public art agreements will be brought forth at a future date in coordination with the Hailey Ice Facility construction schedule. Artists with work in the Ice Facility include Ellen Nasvik, Troy Passey and Marie Stewart.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____

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:

Motion to approve artist agreements and authorize Mayor Davis to sign same.

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

PUBLIC ARTWORK CONTRACT

(Nasvik-Interpretative Center, Multi-Use Arena and Skatepark)

THIS PUBLIC ARTWORK CONTRACT ("Agreement") is made and entered into this ___ day of June, 2011, by and between the CITY OF HAILEY, an Idaho municipal corporation ("Hailey") and ELLEN NASVIK, an individual ("Artist") (Hailey and Artist are collectively referred to as the "Parties").

RECITALS

A. Hailey is a political subdivision of the state of Idaho. Richard L. Davis is the duly elected and acting mayor of Hailey and has been authorized to execute this Agreement.

B. The Parties previously entered into an Art Design Contract which was intended to provide an agreement for design services by the Artist for various components of a public construction project consisting of the construction of a Multi-Use Arena, Ice Skating Rink, an Interpretative Center and an addition to the Hailey Skatepark at the Rodeo Grounds ("Rodeo Grounds Facilities").

C. The Art Design Contract provided for an approval process of the Artist's artwork ("Artwork") and payment of \$9,000 in three equal installments. The Artwork specifically consists of one (1) bench at the Interpretative Center, one (1) mutton busting sculpture at the Multi-Use Arena and one (1) bench and three (3) totems at the Hailey Skatepark. The specifications of the Artwork ("Design Specifications") are more specifically described in attached **Exhibit "A."** The Parties agree that the Artist has performed the services under the Art Design Contract for the first two installments and has been paid \$6,000 for those services.

D. The Art Design Contract contemplated that the Parties would endeavor to enter into a Public Artwork Contract. This Agreement is intended to be that Public Artwork Contract and is intended to replace the Art Design Contract. The Parties specifically understand and agree that the provisions of Art Design Contract which address the installation and construction of artwork at the Rodeo Grounds Facilities, and final payment for such installation and construction and the cost of materials, are now replaced and substituted by this Agreement. The Parties and Hailey Ice, Inc. intend to enter into a different Public Artwork Contract for artwork at the Ice Skating Rink.

E. Subject to the terms and conditions of this Agreement, the Parties wish to enter into this agreement to fabricate and install the artwork at the Rodeo Grounds Facilities.

AGREEMENT

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

1. Scope of Services. The Artist shall fabricate and install the Artwork in substantial

conformity with the Design Specifications and this Agreement and provide all of the necessary services and furnish all supplies, material and equipment necessary to fabricate and install the Artwork. The Artist shall coordinate her work on the benches at the Interpretative Center and Skatepark with Troy Passey. The Artwork must be durable, taking into consideration that the Rodeo Grounds Facilities is a public space that may be exposed to the elements such as weather, temperature variation, and considerable movement of people and equipment. The services required under this Agreement shall be performed in a professional manner and in substantial compliance with all terms and conditions under this Agreement. The Artwork shall be fabricated off-site and then transported to and installed on the designated location at the Interpretative Center. The Artwork associated with the Multi-Use Arena shall be temporarily installed near the Multi-Use Arena during the Fourth of July, 2011 rodeo event. Upon completion of the Interpretative Center, the Artwork associated with the Multi-Use Arena may, in the City's discretion, be moved to a more desirable location at or near the Interpretative Center. The Artwork associated with the Interpretative Center shall be installed at the Interpretative Center upon notification by Hailey or within thirty (30) days after the issuance of a certificate of occupancy for the Interpretative Center, whichever is sooner. The Artwork associated with the Hailey Skatepark shall be installed at the Hailey Skatepark following substantial completion of the Hailey Skatepark and upon notification by Hailey. While the Artwork is being installed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations.

2. Consideration. In consideration for providing the services and materials described herein, Hailey agrees to pay Artist Six Thousand Seven Hundred Fifty and no/100's Dollars (\$6,750.00) according to the following schedule:

- a. Two Thousand Seven Hundred Fifty and no/100's Dollars (\$2,750.00), upon commencement of the fabrication of the Artwork;
- b. Two Thousand and no/100's Dollars (\$2,000.00), at the approximate midpoint of the fabrication of all the Artwork, to be determined by the Hailey public art coordinator; and
- c. Two Thousand and no/100's Dollars (\$2,000.00), thirty (30) days after Hailey accepts title to the Artwork.

3. Fabrication.

a. Review. Hailey shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. The Artist shall notify Hailey in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for installation at the Rodeo Grounds Facilities. Upon review of the Artwork, if Hailey determines that the Artwork does not conform to the Design Specifications, Hailey shall notify the Artist in writing of the deficiencies. In the event Hailey notifies the Artist that the Artwork does not conform to the Design Specifications, Hailey reserves the right to withhold any remaining payment installments to be made under this Agreement, until the Artwork is made to be conforming to the Design Specifications. Hailey shall promptly review changes made to the Artwork, and upon approval, shall notify Artist that the Artwork is conforming, and if applicable, Hailey shall release the second payment installment. If the Artist disputes Hailey's determination that the Artwork does not conform, the Artist shall promptly submit reasons in

writing to Hailey within ten (10) calendar days of Hailey's notification. Hailey shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether the Artist has complied with the terms of this Agreement shall remain with Hailey.

b. Changes. Prior to the execution of any change in the approved design, the Artist shall present proposed changes in writing to Hailey for further review and approval. The Artist must provide a detailed description of any significant change in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved Design Specifications. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design Specifications. If Hailey approves the changes, Hailey shall promptly notify the Artist in writing. If Hailey disapproves of the changes, Hailey shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design Specifications. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the design under this section 3(b). Any claim of the Artist for adjustment under this paragraph must be asserted in writing within ten (10) calendar days after the date of the revision by the Artist.

4. Installation.

a. Review and Acceptance. The Artist shall notify Hailey in writing when all of the Artist's services involving the fabrication and installation of the Artwork as required under this Agreement have been completed. Hailey shall notify the Artist of its final acceptance of the Artwork within ten (10) days after the Artist submits written notice pursuant to this paragraph. The effective date of final acceptance shall be the date Hailey submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that Hailey acknowledges completion of the Artwork in substantial conformity with the Design Specifications, and that Hailey confirms that all of the Artist's services as required under this Agreement have been completed. If Hailey disputes that all the services have been performed, Hailey shall notify the Artist in writing of those services the Artist has failed to perform within ten (10) days after the Artist submitted written notice pursuant to this paragraph. The Artist shall promptly perform those services indicated by Hailey. If the Artist disputes Hailey's determination that not all services have been performed, the Artist shall submit reasons in writing to Hailey within ten (10) days of Hailey's prior notification. Hailey shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether all services have been performed shall remain with Hailey.

b. Ownership. Title to the Artwork automatically passes from Artist to Hailey upon final acceptance and final payment.

c. Maintenance. Upon installation of the Artwork, the Artist shall provide Hailey with written instructions for the appropriate maintenance and preservation of the Artwork.

along with the product data sheets for any material or finish used. After installation, Hailey is responsible for the proper care and maintenance of the Artwork.

5. Risk of Loss. The Artist shall bear the risk of loss or damage to the Artwork until Hailey's final acceptance of the Artwork under paragraph 4(a) of this Agreement. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. Hailey shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of Hailey or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

6. Representations and Warranties. The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to Hailey, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof of any copyright related thereto which may affect or impair the rights granted or title conveyed pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original and with the Artist and shall not infringe upon or violate the rights of any third party;
- g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights or conveyance of title under this Agreement;
- h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations and ordinances, and with all necessary care, skill, and diligence;
- i. these representations and warranties shall survive the termination of this Agreement and conveyance of title to the Artwork; and
- j. all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance by Hailey;

7. Intellectual Property Rights and Ownership of Rights.

a. Artist's Rights. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, as the sole author of the Artwork for the duration of the copyright. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artists may have in law or equity under this Agreement. Upon written request, Hailey shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the notice from the Artist. No provision of this Agreement shall obligate Hailey to alter or remove any such attributive reference printed or published prior to Hailey's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

b. Reproduction Rights. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate three-dimensional 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 commissioned by and in the public art collection 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. Ownership of Documents. One set of presentation materials prepared and submitted under this Agreement shall be retained by Hailey for possible exhibition and to hold for permanent safekeeping.

8. Removal of Artwork.

a. Hailey shall notify the Artist in writing upon adoption of a plan of construction or alteration of the Rodeo Grounds Facilities which would entail removal or relocation of the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artist does not respond after the lapse of 90 days from the date of service on the Artist or if the Artist cannot be served at the address described herein, the Artwork may be removed or relocated as determined by Hailey, without the Artist's consultation or consent. The Artwork may be removed or relocated by Hailey should the Artist and Hailey not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed 90 days after written notice to the Artist. During the 90 day period, the Parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

b. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, Hailey may authorize the removal or relocation of the Artwork without the Artist's prior permission. In the alternative, Hailey may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.

c. If Hailey reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of Hailey's failure to maintain the Artwork as required under this Agreement, Hailey may authorize the removal of the Artwork without the prior approval of the Artist.

d. The provisions of this paragraph 8 are intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

9. Insurance. The Artist shall maintain in full force and effect, at his sole cost and expense, during the term of this Agreement, commercial general liability insurance for the purpose of protecting Hailey against liability for loss or damage, for bodily injury, property damage, personal injury, death, civil rights violations, and errors and omissions, relating to the operations of the Artist under this Agreement. Such policy shall provide insurance against property damage in an amount not less than \$500,000.00 and bodily injury with limits of not less \$500,000.00 per person and \$1,000,000.00 total for each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of Hailey are increased pursuant to the Idaho Tort Claims Act (*Idaho Code Sections 6-901 et seq.*). Such insurance shall be noncancellable except upon thirty (30) days prior written notice to Hailey. All of the insurance policies shall contain provisions that the insurers shall have no right of recovery or subrogation against Hailey, or Hailey's insurer with regard to the aforementioned losses or damages. The Artist's certificates of insurance shall name Hailey and its officials, employees and agents as additional named insured and shall be endorsed to specify that such policies cover the liability assumed by Artist under this Agreement. Artist shall also secure and maintain at least the statutory amounts of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho. Such insurance shall provide at least thirty (30) days written notice to Hailey before such policy is suspended, canceled, amended or terminated. The Artist shall provide evidence of acceptable insurance at limits listed above to City Clerk, City of Hailey, 115 Main Street So., Suite H, Hailey, Idaho 83333.

10. Indemnification. The Artist covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any act or omission on the part of Artist, its agents, employees, assigns or anyone subcontracting with Artist, related to damages that arise out of this Agreement.

11. 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	Ellen Nasvik
115 Main Street So.	PO Box 3412
Hailey, Idaho 83333	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. Independent Contractor. Hailey and Artist hereby agree that the Artist shall fabricate and install the Artwork exclusively as an independent contractor and not as employee of Hailey. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Artist, its agents and employees shall not receive nor be entitled to any employment-related benefits from Hailey including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Hailey offers to its employees. Artist shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Artist under this Agreement. Artist hereby releases, holds harmless and agrees to indemnify Hailey from and against any and all claims or penalties, interest, costs and attorney fees, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.

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

E. 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.

F. 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.

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

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

I. Law of Idaho. This Agreement shall be construed in accordance with the laws of the State of Idaho.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 Public Artwork Contract to be executed on the day and year first written above.

CITY OF HAILEY

ARTIST

Richard L. Davis, Mayor

Ellen Nasvik

ATTEST:

Mary Cone, City Clerk

ARENA/
INTERPRETIVE CENTER



4 1/2

4'

MUTTON BUSTIN' FOR RODEO PARK

BASE COULD BE FREE STANDING OR
WELDED PLATE SET FOR BOLTS



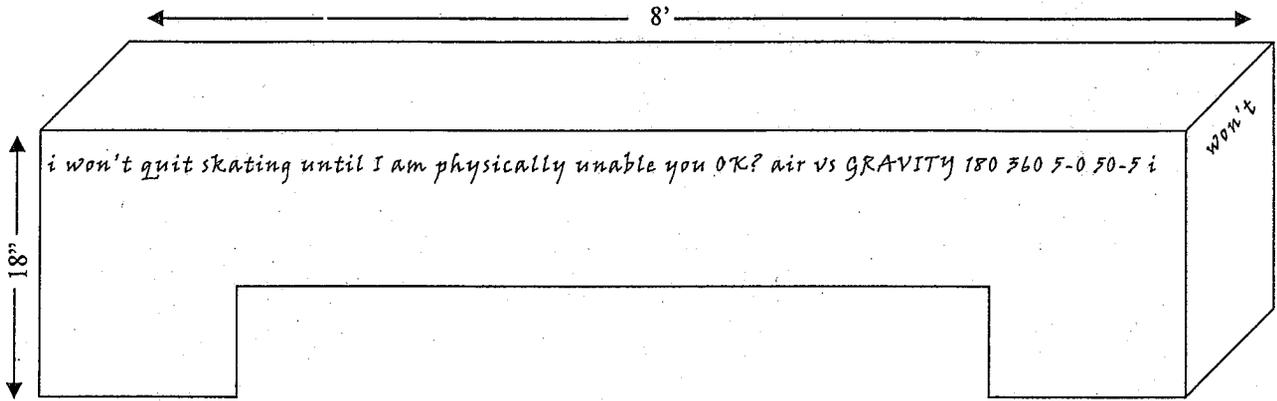
CENTER HEAVY PIPE
 TO BUILD AROUND
 BASE METAL FOR
 BOLTING INTO CONCRETE
 CONCRETE LAID UP FIBRES



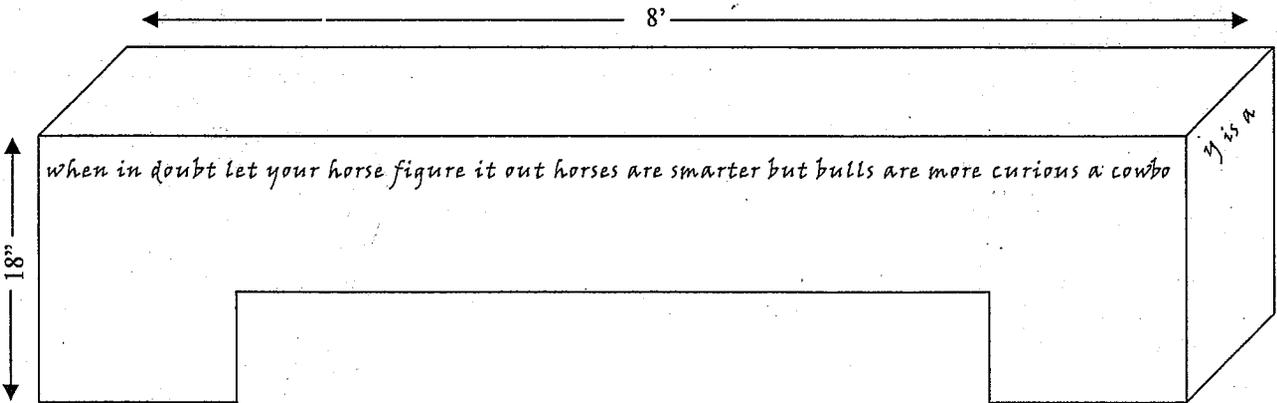
ONLY THOSE WHO
 SWIM AGAINST THE
 CURRENT KNOW ITS
 STRENGTH

SKATE PARK

Skatepark Bench



Interpretive Center / Arena Bench



PUBLIC ARTWORK CONTRACT
(Passey-Interpretative Center and Skatepark)

THIS PUBLIC ARTWORK CONTRACT ("Agreement") is made and entered into this ___ day of June, 2011, by and between the CITY OF HAILEY, an Idaho municipal corporation ("Hailey") and TROY PASSEY, an individual ("Artist") (Hailey and Artist are collectively referred to as the "Parties").

RECITALS

A. Hailey is a political subdivision of the state of Idaho. Richard L. Davis is the duly elected and acting mayor of Hailey and has been authorized to execute this Agreement.

B. The Parties previously entered into an Art Design Contract which was intended to provide an agreement for design services by the Artist for various components of a public construction project consisting of the construction of a Multi-Use Arena, Ice Skating Rink, an Interpretative Center and an addition to the Hailey Skatepark at the Rodeo Grounds ("Rodeo Grounds Facilities").

C. The Art Design Contract provided for an approval process of the Artist's artwork ("Artwork") and payment of \$9,000 in three equal installments. The Artwork specifically consists of embellishments on one (1) bench for the Hailey Skatepark, and embellishments on one (1) bench and text on one (1) single door and one (1) double door at the Interpretative Center. The specifications of the Artwork ("Design Specifications") are more specifically described in attached **Exhibit "A."** The Parties agree that the Artist has performed the services under the Art Design Contract for the first two installments and has been paid \$6,000 for those services.

D. The Art Design Contract contemplated that the Parties would endeavor to enter into a Public Artwork Contract. This Agreement is intended to be that Public Artwork Contract and is intended to replace the Art Design Contract. The Parties specifically understand and agree that the provisions of Art Design Contract which address the installation and construction of artwork at the Rodeo Grounds Facilities, and final payment for such installation and construction and the cost of materials, are now replaced and substituted by this Agreement. The Parties and Hailey Ice, Inc. intend to enter into a different Public Artwork Contract for artwork at the Ice Skating Rink.

E. Subject to the terms and conditions of this Agreement, the Parties wish to enter into this agreement to fabricate and install the artwork at the Rodeo Grounds Facilities.

AGREEMENT

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

1. Scope of Services. The Artist shall fabricate the Artwork in substantial conformity with the Design Specifications and this Agreement and provide all of the necessary services and furnish all supplies, material and equipment necessary to fabricate the Artwork. The Artist shall coordinate his work on the benches at the Interpretative Center and Skatepark with Ellen Nasvik. The Artist shall coordinate his work on the doors at the Interpretative with Bill Amaya. The Artwork must be durable, taking into consideration that the Rodeo Grounds Facilities is a public space that may be exposed to the elements such as weather, temperature variation, and considerable movement of people and equipment. The services required under this Agreement shall be performed in a professional manner and in

substantial compliance with all terms and conditions under this Agreement. The Artwork shall be fabricated off-site and then transported to and installed on the designated location at the Interpretative Center. The Artwork associated with the Interpretative Center shall be installed by Hailey at the Interpretative Center within thirty (30) days after the issuance of a certificate of occupancy for the Interpretative Center.

2. Consideration. In consideration for providing the services and materials described herein, Hailey agrees to pay Artist One Thousand Five Hundred and no/100's Dollars (\$1,500.00) according to the following schedule:

- a. Five Hundred and no/100's Dollars (\$500.00), upon commencement of the fabrication of the Artwork; and
- b. One Thousand and no/100's Dollars (\$1,000.00), thirty (30) days after Hailey accepts title to the Artwork.

3. Fabrication.

a. Review. Hailey shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. The Artist shall notify Hailey in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for installation at the Rodeo Grounds Facilities. Upon review of the Artwork, if Hailey determines that the Artwork does not conform to the Design Specifications, Hailey shall notify the Artist in writing of the deficiencies. In the event Hailey notifies the Artist that the Artwork does not conform to the Design Specifications, Hailey reserves the right to withhold any remaining payment installments to be made under this Agreement, until the Artwork is made to be conforming to the Design Specifications. Hailey shall promptly review changes made to the Artwork, and upon approval, shall notify Artist that the Artwork is conforming, and if applicable, Hailey shall release the second payment installment. If the Artist disputes Hailey's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to Hailey within ten (10) calendar days of Hailey's notification. Hailey shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether the Artist has complied with the terms of this Agreement shall remain with Hailey.

b. Changes. Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to Hailey for further review and approval. The Artist must provide a detailed description of any significant change in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved Design Specifications. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design Specifications. If Hailey approves the changes, Hailey shall promptly notify the Artist in writing. If Hailey disapproves of the changes, Hailey shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design Specifications. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the design under this section 3(b). Any claim of the Artist for adjustment under this paragraph must be asserted in writing within ten (10) calendar days after the date of the revision by the Artist.

4. Installation.

a. Review and Acceptance. The Artist shall notify Hailey in writing when all of the Artist's services involving the fabrication of the Artwork as required under this Agreement have been completed. Hailey shall notify the Artist of its final acceptance of the Artwork within ten (10) days after the Artist submits written notice pursuant to this paragraph. The effective date of final acceptance shall be the date Hailey submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that Hailey acknowledges completion of the Artwork in substantial conformity with the Design Specifications, and that Hailey confirms that all of the Artist's services as required under this Agreement have been completed. If Hailey disputes that all the services have been performed, Hailey shall notify the Artist in writing of those services the Artist has failed to perform within ten (10) days after the Artist submitted written notice pursuant to this paragraph. The Artist shall promptly perform those services indicated by Hailey. If the Artist disputes Hailey's determination that not all services have been performed, the Artist shall submit reasons in writing to Hailey within ten (10) days of Hailey's prior notification. Hailey shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether all services have been performed shall remain with Hailey.

b. Ownership. Title to the Artwork automatically passes from Artist to Hailey upon final acceptance, final payment and installation.

c. Maintenance. Upon installation of the Artwork, the Artist shall provide Hailey with written instructions for the appropriate maintenance and preservation of the Artwork along with the product data sheets for any material or finish used. After installation, Hailey is responsible for the proper care and maintenance of the Artwork.

5. Risk of Loss. The Artist shall bear the risk of loss or damage to the Artwork during the period of time when the embellishments and text are made to the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. Hailey shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of Hailey or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

6. Representations and Warranties. The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to Hailey, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof of any copyright related thereto which may affect or impair the rights granted or title conveyed pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original and with the Artist

and shall not infringe upon or violate the rights of any third party;

g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights or conveyance of title under this Agreement;

h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations and ordinances, and with all necessary care, skill, and diligence;

i. these representations and warranties shall survive the termination of this Agreement and conveyance of title to the Artwork; and

j. all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance by Hailey;

7. Intellectual Property Rights and Ownership of Rights.

a. Artist's Rights. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, as the sole author of the Artwork for the duration of the copyright. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artists may have in law or equity under this Agreement. Upon written request, Hailey shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the notice from the Artist. No provision of this Agreement shall obligate Hailey to alter or remove any such attributive reference printed or published prior to Hailey's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

b. Reproduction Rights. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate three-dimensional 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 commissioned by and in the public art collection 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. Ownership of Documents. One set of presentation materials prepared and submitted under this Agreement shall be retained by Hailey for possible exhibition and to hold for permanent safekeeping.

8. Removal of Artwork.

a. Hailey shall notify the Artist in writing upon adoption of a plan of construction or alteration of the Rodeo Grounds Facilities which would entail removal or relocation of the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artist does not respond after the lapse of 90 days from the date of service on the Artist or if the Artist cannot be served at the address described herein, the Artwork may be removed or relocated as determined by Hailey, without the Artist's consultation or consent. The Artwork may be removed or relocated by Hailey should the Artist and Hailey not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed 90 days after written notice to the Artist. During the 90 day period, the Parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

b. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, Hailey may authorize the removal or relocation of the Artwork without the Artist's prior permission. In the alternative, Hailey may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.

c. If Hailey reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of Hailey's failure to maintain the Artwork as required under this Agreement, Hailey may authorize the removal of the Artwork without the prior approval of the Artist.

d. The provisions of this paragraph 8 are intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

9. Indemnification. The Artist covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any act or omission on the part of Artist, its agents, employees, assigns or anyone subcontracting with Artist, related to damages that arise out of this Agreement.

10. 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

Troy Passey
5572 N Turret Way
Boise, Idaho 83703

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. Independent Contractor. Hailey and Artist hereby agree that the Artist shall fabricate and install the Artwork exclusively as an independent contractor and not as employee of Hailey. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Artist, its agents and employees shall not receive nor be entitled to any employment-related benefits from Hailey including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Hailey offers to its employees. Artist shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Artist under this Agreement. Artist hereby releases, holds harmless and agrees to indemnify Hailey from and against any and all claims or penalties, interest, costs and attorney fees, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.

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

E. 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.

F. 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.

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

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

I. Law of Idaho. This Agreement shall be construed in accordance with the laws of the State of Idaho.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 Public Artwork Contract to be executed on the day and year first written above.

CITY OF HAILEY

ARTIST

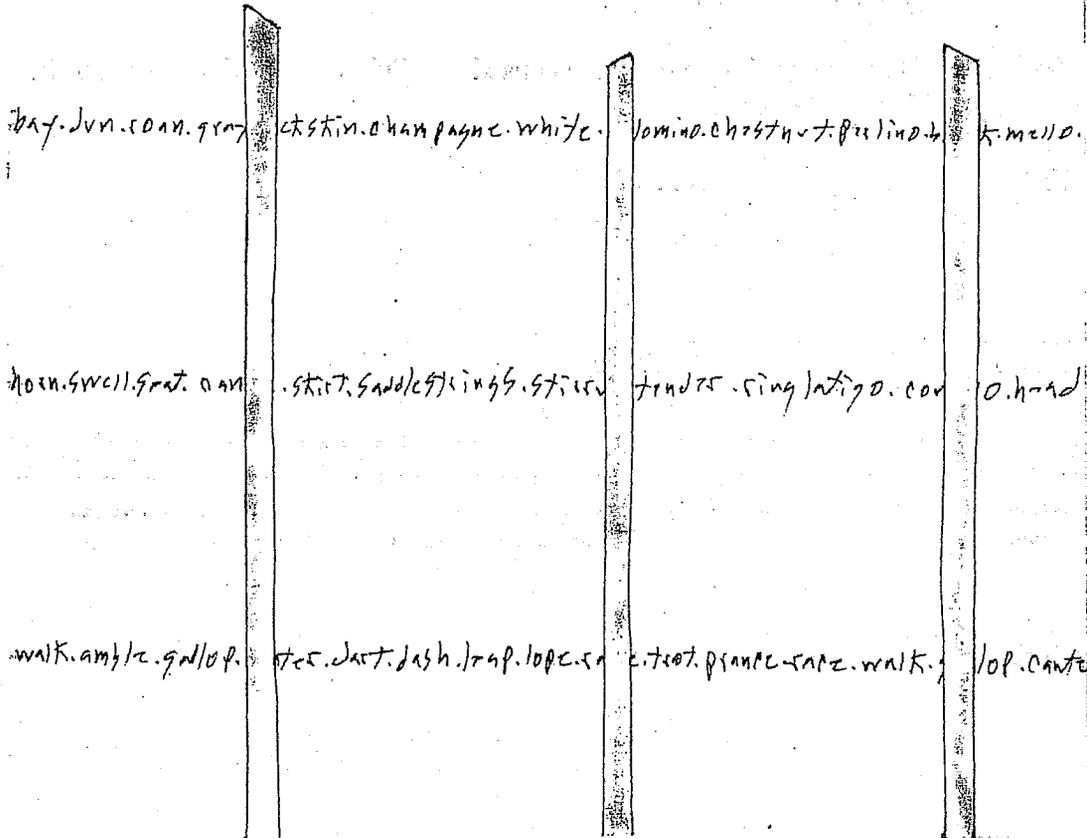
Richard L. Davis, Mayor

Troy Passey

ATTEST:

Mary Cone, City Clerk

Exhibit A



INTERPRETIVE
CENTER

West Door Interior

1. Hailey place names

Indian Creek
Bullion Gulch
Croy Creek
Red Elephant
Carbonite
Red Devil
Quigley
(I'll need help with adding to these. . .)

INTERPRETIVE CENTER
South Doors Interior
Preliminary Text
to be narrowed/refined/
checked for accuracy

2. Names of Mines

What I have included are Blaine County mines--perhaps some knowledgeable person could help determine which are closer to Hailey? I did notice that some gulches etc. around Hailey share the names of some Mines.

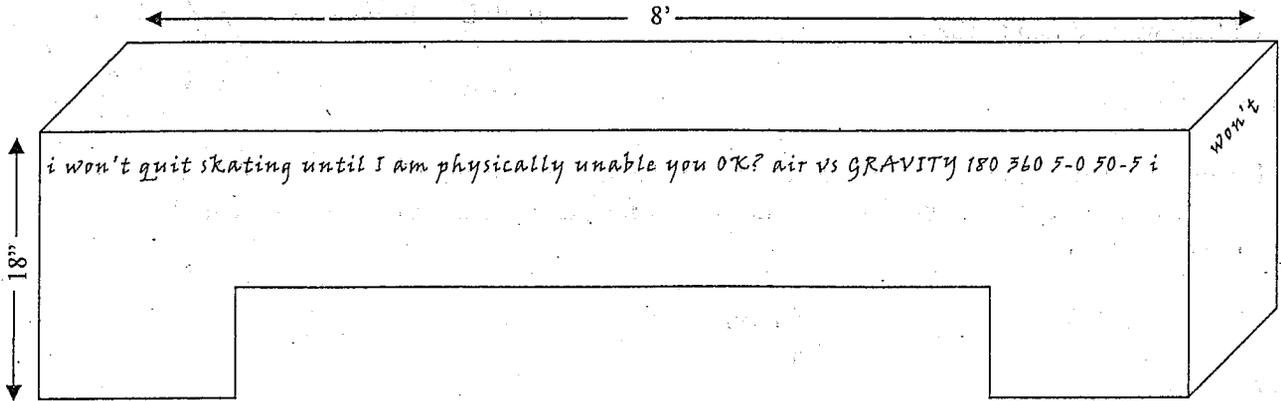
Camas	Muldoon
Climax	Mutual
Courier	North Star
Croesus	Old Triumph
Democrat	Parker
Drummond	Paymaster
Eagle Bird	Pierce Tunnel
Golden Star	Red Cloud
Hope	Red Elephant
Idaho Muldoon	Silver King
Independence	Silver Star King
June Day	Solace
Liberty Gem	Snoose
Luck Gulch	St. Louis
Mascot	Sunshine
McCoy	Vault
Minnie Moore	Triumph
Montgomery	Uhrig
	Vienna
	Webfoot.

3. The words for "Silver" (and Gold?) in the native languages of cultures who were represented in mining in the region.

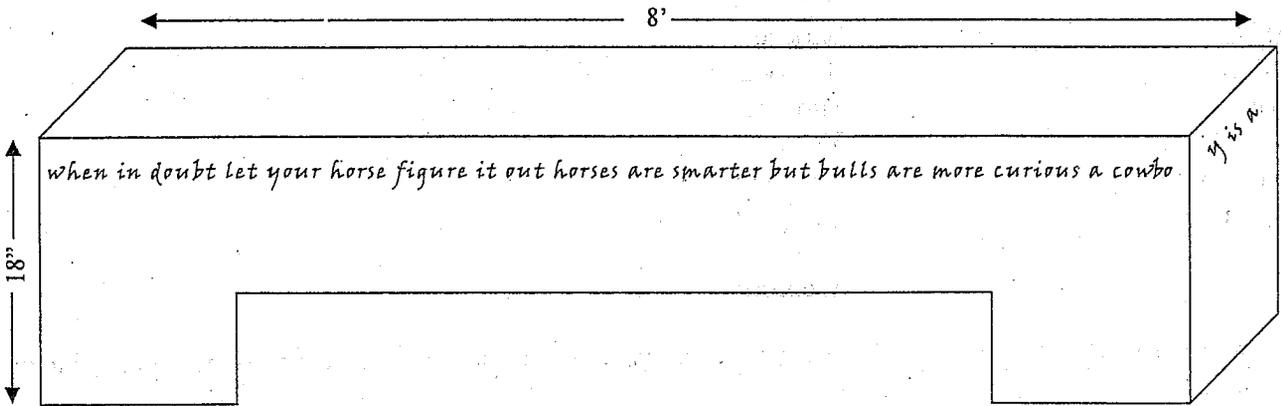
I used google translator for the following:

Native American/ Shoshone?
Basque zilarrezko)
Chinese (银)
Scottish (Silver)
Peruvian/spanish (plata)

Skatepark Bench



Interpretive Center / Arena Bench



Passy - Text only

PUBLIC ARTWORK CONTRACT
(Amaya-Interpretative Center)

THIS PUBLIC ARTWORK CONTRACT ("Agreement") is made and entered into this ___ day of June, 2011, by and between the CITY OF HAILEY, an Idaho municipal corporation ("Hailey") and BILL AMAYA, an individual ("Artist") (Hailey and Artist are collectively referred to as the "Parties").

RECITALS

A. Hailey is a political subdivision of the state of Idaho. Richard L. Davis is the duly elected and acting mayor of Hailey and has been authorized to execute this Agreement.

B. The Parties previously entered into an Art Design Contract which was intended to provide an agreement for design services by the Artist for various components of a public construction project consisting of the construction of a Multi-Use Arena, Ice Skating Rink, an Interpretative Center and an addition to the Hailey Skatepark at the Rodeo Grounds ("Rodeo Grounds Facilities").

C. The Art Design Contract provided for an approval process of the Artist's artwork ("Artwork") and payment of \$9,000 in three equal installments. The Artwork specifically consists of one (1) single door panel and one (1) double door panel at the Interpretative Center. The specifications of the Artwork ("Design Specifications") are more specifically described in attached **Exhibit "A."** The Parties agree that the Artist has performed the services under the Art Design Contract for the first two installments and has been paid \$6,000 for those services.

D. The Art Design Contract contemplated that the Parties would endeavor to enter into a Public Artwork Contract. This Agreement is intended to be that Public Artwork Contract and is intended to replace the Art Design Contract. The Parties specifically understand and agree that the provisions of Art Design Contract which address the installation and construction of artwork at the Rodeo Grounds Facilities, and final payment for such installation and construction and the cost of materials, are now replaced and substituted by this Agreement.

E. Subject to the terms and conditions of this Agreement, the Parties wish to enter into this agreement to fabricate and install the artwork at the Rodeo Grounds Facilities.

AGREEMENT

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

1. Scope of Services. The Artist shall fabricate the Artwork in substantial conformity with the Design Specifications and this Agreement and provide all of the necessary services and furnish all supplies, material and equipment necessary to fabricate the Artwork. The Artist shall coordinate his work on the doors at the Interpretative Center with Troy Passey. The Artist is not responsible for the installation of the doors, nor the hardware on the doors. The Artwork must be durable, taking into consideration that the Rodeo Grounds Facilities is a public space that may be exposed to the elements such as weather, temperature variation, and considerable

movement of people and equipment. The services required under this Agreement shall be performed in a professional manner and in substantial compliance with all terms and conditions under this Agreement. The Artwork shall be fabricated off-site and then transported to the designated location at the Interpretative Center. The Artwork shall be delivered to the Interpretative Center upon notification by Hailey or within thirty (30) days after the issuance of a certificate of occupancy for the Interpretative Center, whichever is sooner.

2. Consideration. In consideration for providing the services and materials described herein, Hailey agrees to pay Artist Eight Thousand and no/100's Dollars (\$8,000.00) according to the following schedule:

- a. Five Thousand and no/100's Dollars (\$5,000.00), upon commencement of the fabrication of the Artwork; and
- b. Three Thousand and no/100's Dollars (\$3,000.00), thirty (30) days after Hailey accepts title to the Artwork.

3. Fabrication.

a. Review. Hailey shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. The Artist shall notify Hailey in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery to the Rodeo Grounds Facilities. Upon review of the Artwork, if Hailey determines that the Artwork does not conform to the Design Specifications, Hailey shall notify the Artist in writing of the deficiencies. In the event Hailey notifies the Artist that the Artwork does not conform to the Design Specifications, Hailey reserves the right to withhold any remaining payment installments to be made under this Agreement, until the Artwork is made to be conforming to the Design Specifications. Hailey shall promptly review changes made to the Artwork, and upon approval, shall notify Artist that the Artwork is conforming, and if applicable, Hailey shall release the second payment installment. If the Artist disputes Hailey's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to Hailey within ten (10) calendar days of Hailey's notification. Hailey shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether the Artist has complied with the terms of this Agreement shall remain with Hailey.

b. Changes. Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to Hailey for further review and approval. The Artist must provide a detailed description of any significant change in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved Design Specifications. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design Specifications. If Hailey approves of the changes, Hailey shall promptly notify the Artist in writing. If Hailey disapproves of the changes, Hailey shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design Specifications. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the design under this section 3(b). Any claim of the Artist for adjustment under this paragraph must be asserted in writing within ten (10) calendar days after the date of the revision by the Artist.

4. Installation.

a. Review and Acceptance. The Artist shall notify Hailey in writing when all of the Artist's services involving the fabrication of the Artwork as required under this Agreement have been completed. Hailey shall notify the Artist of its final acceptance of the Artwork within ten (10) days after the Artist submits written notice pursuant to this paragraph. The effective date of final acceptance shall be the date Hailey submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that Hailey acknowledges completion of the Artwork in substantial conformity with the Design Specifications, and that Hailey confirms that all of the Artist's services as required under this Agreement have been completed. If Hailey disputes that all the services have been performed, Hailey shall notify the Artist in writing of those services the Artist has failed to perform within ten (10) days after the Artist submitted written notice pursuant to this paragraph. The Artist shall promptly perform those services indicated by Hailey. If the Artist disputes Hailey's determination that not all services have been performed, the Artist shall submit reasons in writing to Hailey within ten (10) days of Hailey's prior notification. Hailey shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, the final determination as to whether all services have been performed shall remain with Hailey.

b. Ownership. Title to the Artwork automatically passes from Artist to Hailey upon final acceptance, final payment and installation.

c. Maintenance. Upon installation of the Artwork, the Artist shall provide Hailey with written instructions for the appropriate maintenance and preservation of the Artwork along with the product data sheets for any material or finish used. After installation, Hailey is responsible for the proper care and maintenance of the Artwork.

5. Risk of Loss. The Artist shall bear the risk of loss or damage to the Artwork until Hailey's final acceptance of the Artwork under paragraph 4(a) of this Agreement. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. Hailey shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of Hailey or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

6. Representations and Warranties. The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to Hailey, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof of any copyright related thereto which may affect or impair the rights granted or title conveyed pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created or performed by the Artist under this Agreement, whether

created by the Artist alone or in collaboration with others, shall be wholly original and with the Artist and shall not infringe upon or violate the rights of any third party;

g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights or conveyance of title under this Agreement;

h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations and ordinances, and with all necessary care, skill, and diligence;

i. these representations and warranties shall survive the termination of this Agreement and conveyance of title to the Artwork; and

j. all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance by Hailey;

7. Intellectual Property Rights and Ownership of Rights.

a. Artist's Rights. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 *et seq.*, as the sole author of the Artwork for the duration of the copyright. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artists may have in law or equity under this Agreement. Upon written request, Hailey shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the notice from the Artist. No provision of this Agreement shall obligate Hailey to alter or remove any such attributive reference printed or published prior to Hailey's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

b. Reproduction Rights. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate three-dimensional 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 commissioned by and in the public art collection 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. Ownership of Documents. One set of presentation materials prepared and submitted under this Agreement shall be retained by Hailey for possible exhibition and to hold for permanent safekeeping.

8. Removal of Artwork.

a. Hailey shall notify the Artist in writing upon adoption of a plan of construction or alteration of the Rodeo Grounds Facilities which would entail removal or relocation of the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artist does not respond after the lapse of 90 days from the date of service on the Artist or if the Artist cannot be served at the address described herein, the Artwork may be removed or relocated as determined by Hailey, without the Artist's consultation or consent. The Artwork may be removed or relocated by Hailey should the Artist and Hailey not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed 90 days after written notice to the Artist. During the 90 day period, the Parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

b. In the event of changes in building codes or zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, Hailey may authorize the removal or relocation of the Artwork without the Artist's prior permission. In the alternative, Hailey may commission the Artist by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.

c. If Hailey reasonably determines that the Artwork presents imminent harm or hazard to the public, other than as a result of Hailey's failure to maintain the Artwork as required under this Agreement, Hailey may authorize the removal of the Artwork without the prior approval of the Artist.

d. The provisions of this paragraph 8 are intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

9. Indemnification. The Artist covenants and agrees to indemnify, defend and hold Hailey harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any act or omission on the part of Artist, its agents, employees, assigns or anyone subcontracting with Artist, related to damages that arise out of this Agreement.

10. 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

Bill Amaya
P.O. Box 4796
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. Independent Contractor. Hailey and Artist hereby agree that the Artist shall fabricate and install the Artwork exclusively as an independent contractor and not as employee of Hailey. The Parties do not intend to create through this Agreement any partnership, corporation, employer/employee relationship, joint venture or other business entity or relationship other than that of independent contractor. Artist, its agents and employees shall not receive nor be entitled to any employment-related benefits from Hailey including without limitation, workers compensation insurance, unemployment insurance, health insurance, retirement benefits or any benefit that Hailey offers to its employees. Artist shall be solely responsible for the payment of all payroll and withholding taxes for amounts paid to Artist under this Agreement. Artist hereby releases, holds harmless and agrees to indemnify Hailey from and against any and all claims or penalties, interest, costs and attorney fees, which in any manner relate to or arise from any failure to pay such payroll or withholding taxes.

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

E. 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.

F. 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.

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

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

I. Law of Idaho. This Agreement shall be construed in accordance with the laws of the State of Idaho.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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 Public Artwork Contract to be executed on the day and year first written above.

CITY OF HAILEY

ARTIST

Richard L. Davis, Mayor

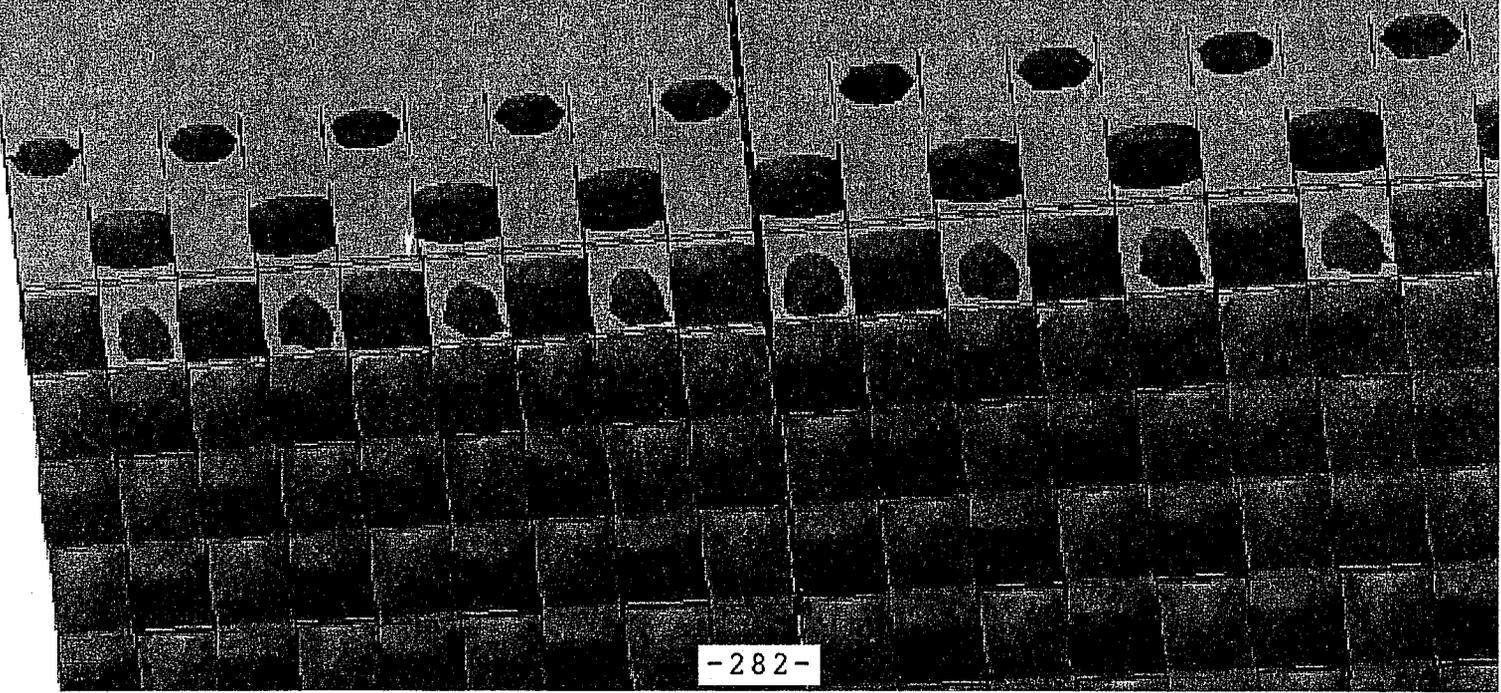
Bill Amaya

ATTEST:

Mary Cone, City Clerk

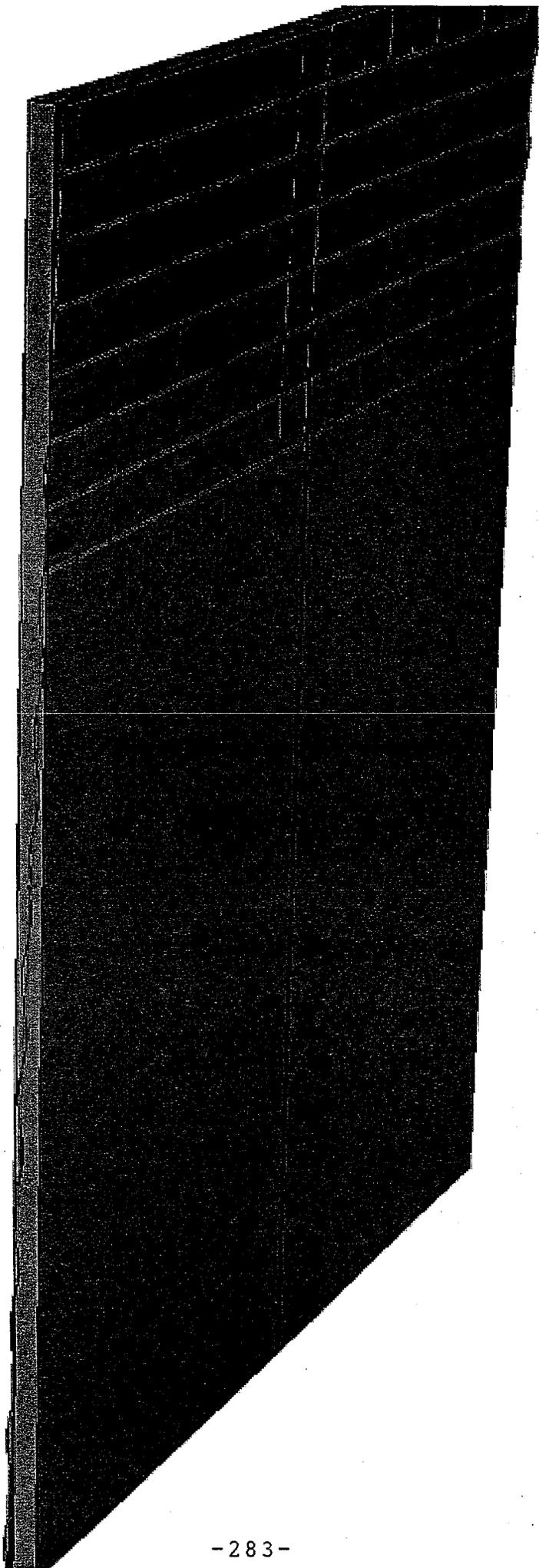
INTERPRETIVE
CONTEXT

South Doors
Extension



INTERPRETIVE
CENTER

South Doors
Interior



1. Hailey place names

Indian Creek
Bullion Gulch
Croy Creek
Red Elephant
Carbonite
Red Devil
Quigley
(I'll need help with adding to these. . . .)

INTERPRETIVE CENTER
South Doors Interior
Preliminary Text
to be narrowed/refined/
checked for accuracy

2. Names of Mines

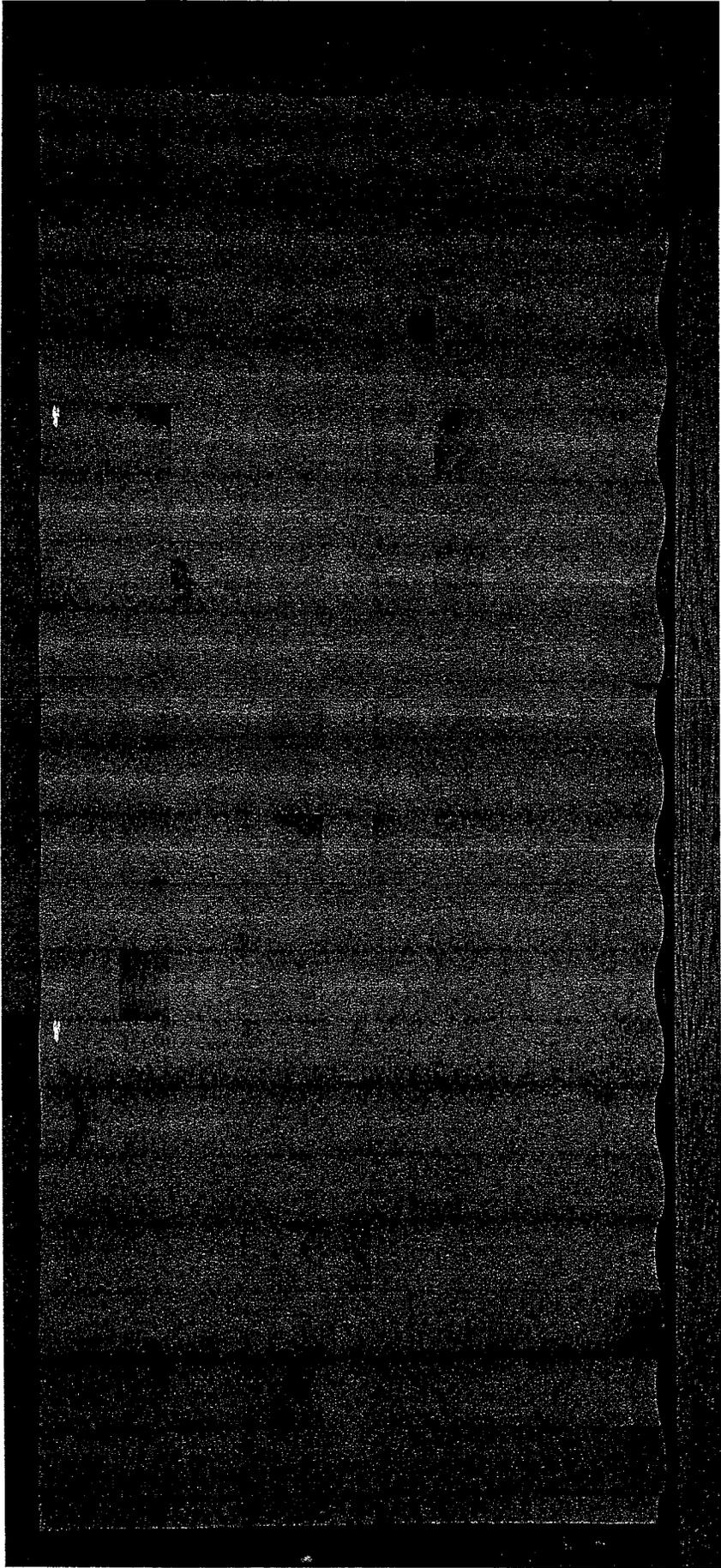
What I have included are Blaine County mines--perhaps some knowledgeable person could help determine which are closer to Hailey? I did notice that some gulches etc. around Hailey share the names of some Mines.

Camas	Muldoon
Climax	Mutual
Courier	North Star
Croesus	Old Triumph
Democrat	Parker
Drummond	Paymaster
Eagle Bird	Pierce Tunnel
Golden Star	Red Cloud
Hope	Red Elephant
Idaho Muldoon	Silver King
Independence	Silver Star King
June Day	Solace
Liberty Gem	Snoose
Luck Gulch	St. Louis
Mascot	Sunshine
McCoy	Vault
Minnie Moore	Triumph
Montgomery	Uhrig
	Vienna
	Webfoot.

3. The words for "Silver" (and Gold?) in the native languages of cultures who were represented in mining in the region.

I used google translator for the following:

Native American/ Shoshone?
Basque zilarrezko)
Chinese (银)
Scottish (Silver)
Peruvian/spanish (plata)



Corrugated Wood Sample
West Door Extension

INTERPRETIVE
CENTER

bay. Jun. can. gray. ct skin. champagne. white. lomin. chestnut. perlind. k. mello.

horn. swell. great. can. stier. saddlestings. stier. tindr. ring latigo. cow. o. head

walk. amble. gallop. ste. jact. dash. trap. lopc. s. c. trot. plane. pace. walk. lop. cant

INTERPRETIVE
CENTER

West Door Interior