



Kreizenbeck Constructors

TRANSMITTAL

Date: **November 3, 2010**

To: Mr. Tom Hellen
City of Hailey
115 Main Street South
Hailey, Idaho 83333

RECEIVED
NOV 03 2010

RE: **Hailey Rodeo Arena Multi-Use Facility** KC Job No: **10-007**

We are sending you:

<i>Copies</i>	<i>Description</i>
2	AIA 101/CMa – 1992 Standard form of Agreement (Extreme Excavation, Inc.)
1	Performance and Payment Bonds (Extreme Excavation, Inc.)

Action: For your review, signature, and return.

Please see the attached documents for Extreme Excavation, Inc. Please sign both copies of the Standard form of Agreement, returning one original copy to our office.

Thank you

CC: KC File

Signed: Dena Nelson-Hendren

AIA[®] Document A101/CMa[™] – 1992

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a **STIPULATED SUM**

Bid Package No. 1 – Building Excavation

AGREEMENT made as of the 19th day of October in the year 2010
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Hailey
115 South Main
Hailey, Idaho 83333

and the Contractor:
(Name, legal status and address)

Extreme Excavation, Inc.
36 North Highway 75
Shoshone, Idaho 83352

For the following Project:
(Include detailed description of Project, location, address and scope.)

City of Hailey
Rodeo Grounds Project – Phase I
Excludes:

- Work associated with the construction of the Ice Rink
- Demolition of existing rodeo grounds
- Installation of primary sewer and water utilities

The Construction Manager is:
(Name, legal status and address)

Kreizenbeck, LLC dba Kreizenbeck Constructors
251 East Front Street
Suite 110
Boise, Idaho 83702

The Architect is:
(Name, legal status and address)

Ruscitto/Latham/Blanton Architectural, P.A.
PO Box 419
Sun Valley, Idaho 83353

The Owner and Contractor agree as set forth below.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The 1992 Edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes:

(1835363441)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Provide all labor, material, and equipment to complete the building excavation, backfill and placement of building pad materials as noted on the drawings and per the following:

Division 01 – General Requirements
Section 310000 – Excavation

Document – Geotechnical Engineering Report**
** As applicable to this scope of work

This Contract specifically includes but is not limited to:

- Provide excavation, backfill and compaction for all concrete foundations and slabs provided under this scope of work. Excavate all material to design grades.
- Over excavation, will occur on a unit prices bases as described in the contract documents.
- Furnish, place, and compact aggregate material at all concrete under this contract and as shown in the construction documents.
- All interior foundation areas below slabs shall be backfilled with 1 ½ " minus gravels to a depth of 6" below finish floor.
- Provide and install vapor barrier and 2" of approved clean graded sand below concrete slabs. Coordinate with plumbing trade for penetrations.
- Furnish all survey work required for this contract. Reference "Construction Facilities and Temporary Controls" for survey provided by Construction Manager.

This Contract specifically excludes:

- Site excavation (parking lot, sidewalks, etc.)
- Perimeter roof drain piping.
- Foundation Dampproofing.
- Foundation Rigid Insulation.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement is the date from which the Contract Time of Section 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed by issuance of a Notice to Proceed.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than

(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

The Substantial Completion for the Rodeo Arena work is June 30, 2011; as defined in the project schedule.

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User Notes:

(1835363441)

Portion of Work

Bid Package #1 – Building Excavation

Substantial Completion date

As identified in the Project Schedule contained in the Project Manual dated September 23, 2010.

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor in current funds for the Contractor’s performance of the Contract the Contract Sum of Twenty-Five Thousand Dollars and Zero Cents (\$ 25,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

§ 4.3 Unit prices, if any, are as follows:

Description	Price (\$ 0.00)
Remove (excavating) silty sand or other unsuitable materials on a cubic yard basis.	\$3.50
Furnishing, placing and compacting approved imported structural fill on a cubic yard basis.	\$15.00
Placing and compacting excavated on-site gravel material on a cubic yard basis	\$5.00

ARTICLE 5 PROGRESS PAYMENTS

§ 5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 25th day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Construction Manager receives the Application for Payment.

§ 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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§ 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Five Percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.7 of the General Conditions;

§ 5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five Percent (5%);

§ 5.6.3 Subtract the aggregate of previous payments made by the Owner; and

§ 5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.7 The progress payment amount determined in accordance with Section 5.6 shall be further modified under the following circumstances:

§ 5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety-Five Percent (95%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

§ 5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

§ 5.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

ARTICLE 6 FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Section 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Project Certificate for Payment, or as follows:

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

The legal rate of interest shall be 8% per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and

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elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 Temporary facilities and services:

(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)

Phase I Project Manual, Dated September 23, 2010

§ 7.4 Other Provisions:

(Here list any special provisions affecting the Contract.)

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions:

§ 8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101/CMA, 1992 Construction Manager-Adviser Edition.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201/CMA, 1992 Construction Manager-Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Phase I Project Manual dated September 23, 2010, and are as follows:

Document	Title	Pages
Exhibit A	Contract Document Schedule	2

§ 9.1.4 The Specifications are those contained in the Phase I Project Manual dated as in Section 9.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications Exhibit: Contract Document Schedule, Exhibit A

(Table deleted)

§ 9.1.5 The Drawings are as follows:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings Exhibit: Contract Document Schedule, Exhibit A

(Table deleted)

§ 9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
One	October 11, 2010	5

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

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§ 9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Contract Document Schedule, Exhibit A
Standard Form of Agreement between Owner and Contractor, AIA Document A101/CMA, 1992
General Conditions of the Contract for Construction, AIA Document A201/CMA, 1992

This Agreement entered into as of the day and year first written above.

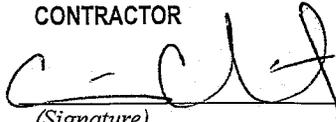
OWNER



(Signature)
Rick Davul Maya

(Printed name and title)

CONTRACTOR



(Signature)
Craig Christensen

(Printed name and title)

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CONTRACT DOCUMENT SCHEDULE (EXHIBIT A)
Hailey Rodeo Arena Multi-Use Facility – PHASE I
791 Main Street South
Hailey, Idaho 83333

KC PROJECT NO. 10-007
October 2010

PROJECT DOCUMENTS as issued by Ruscitto/Latham/Blanton Architectura, P.A. and prepared by the following project team:

Architect – Ruscitto/Latham/Blanton Architectura, P.A.
 Civil Engineer – Galena Engineering
 Geotechnical Engineering – Geoengineers, Inc.
 Structural Engineer – Ruscitto/Latham/Blanton Architectura, P.A.
 Mechanical Engineer – ES2
 Electrical Engineer – Paul Stoops Associates

PROJECT MANUALS

Phase I Project Manual – dated September 23, 2010

ADDENDA:

Addendum No. One dated October 11, 2010 (5 pgs)

DRAWINGS – dated September 23, 2010

ARCHITECTURAL / STRUCTURAL

1.0	Project Information	2.0	Site Plan
C2	Survey	C3	Site Utilities Plan
3.0	Not Used	4.0	Main Floor Plan
4.1	Second Level Floor Plan	4.2	Roof Plan
4.3	Main Level Enlarged Floor Plan	4.4	Main Level Enlarged Floor Plan
4.5	Main Level Enlarged Floor Plan	4.6	Main Level Enlarged Floor Plan
4.7	Main Level Enlarged Floor Plan	5.0	Building Section / Elevations
5.1	Building Sections	6.0	Elevations
6.1	Enlarged Elevations	6.2	Enlarged Elevations
6.3	Interior Elevations	6.4	Interior Elevations
7.0	Not Used	8.0	Not Used
9.0	Stairs and Ramps	9.1	Stairs and Ramps
10.0	Room Finish Schedule	10.1	Door and Window Schedule
D1.0	Not Used	D1.1	Not Used
D2.0	Foundation Details	D3.0	Framing Details
D3.1	Framing Details	D4.0	Not Used
D5.0	ADA Details	S1.0	Structural Specification
S1.1	Structural Special Inspection Specification	S2.0	Foundation Plan
S2.1	North Foundation Plan	S2.2	East Foundation Plan
S2.3	South Foundation Plan	S3.0	Roof Framing Plan
S3.1	North Roof Framing Plan	S3.2	East Roof Framing Plan
S3.3	South Roof Framing Plan	S4.0	Bleacher Framing Plan
S4.1	North Framing Plan	S4.2	East Bleacher Framing Plan
S4.3	South Bleacher Framing Plan		

ELECTRICAL

E2.1	Main Level Electrical Plan	E3.1	Emergency / Egress Lighting Plan
E3.2	Upper Level Electrical Plan		

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AIA Document A312

Bond No.: 5091726

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Extreme Excavation, Inc.
36 North Highway 75, Shoshone, ID 83352

SURETY (Name and Principal Place of Business):

SureTec Insurance Company
952 Echo Lane Ste. 450, Houston, TX 77024

OWNER (Name and Address):

City of Hailey
115 South Main
Hailey, ID 83333

CONSTRUCTION CONTRACT

Date: 10/19/10

Amount: Twenty five thousand and 00/100 (\$ 25,000.00)

Description (Name and Location): Rodeo Grounds Project - Phase I

BOND

Date (Not earlier than Construction Contract Date): October 28th, 2010

Amount: Twenty five thousand and 00/100 (\$ 25,000.00)

Modifications to this Bond: [X] None [] See Page 3

CONTRACTOR AS PRINCIPAL

Company: Extreme Excavation, Inc. (Corporate Seal)

Signature: [Handwritten Signature]

Name and Title: Craig Christiansen President

(Any additional signatures appear on page 3)

SURETY

Company: SureTec Insurance Company (Corporate Seal)

Signature: [Handwritten Signature]

Name and Title: Alberto Paez Attorney-In-Fact

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

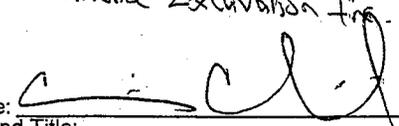
12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: *Extreme Excavation Inc.* (Corporate Seal)

SURETY
Company: (Corporate Seal)

Signature: 
Name and Title:
Address: *Craig Christians President*

Signature: _____
Name and Title:
Address:

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AIA Document A312

Bond No.: 5091726

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
Extreme Excavation, Inc.
36 North Highway 75, Shoshone, ID 83352

SURETY (Name and Principal Place of Business):
SureTec Insurance Company
952 Echo Lane Ste. 450, Houston, TX 77024

OWNER (Name and Address):

City of Hailey
115 South Main
Hailey, ID 83333

CONSTRUCTION CONTRACT

Date: 10/19/10

Amount: Twenty five thousand and 00/100 (\$ 25,000.00)

Description (Name and Location): Rodeo Grounds Project - Phase I

BOND

Date (Not earlier than Construction Contract Date): October 28th, 2010

Amount: Twenty five thousand and 00/100 (\$ 25,000.00)

Modifications to this Bond:

[X] None

[] See Page 6

CONTRACTOR AS PRINCIPAL

Company: Extreme Excavation, Inc. (Corporate Seal)

Signature: [Handwritten Signature]

Name and Title: Craig Christensen President

SURETY

Company: SureTec Insurance Company (Corporate Seal)

Signature: [Handwritten Signature]

Name and Title: Alberto Paez Attorney-In-Fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY-Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

- .1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contractor to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Paragraph 4 is amended to insert sub-paragraph 4.3 which states: 4.3 Claimant has furnished to Surety proof of claim duly sworn to by Claimant with adequate supporting documentation proving the amount claimed is due and payable.

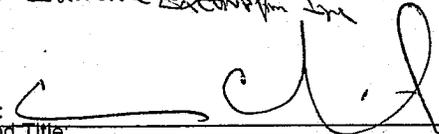
Paragraph 5 shall be amended to delete the word "or" and insert the word "and" in its place.

Paragraph 6 and its sub paragraphs 6.1 and 6.2 shall be deleted in their entirety.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: Edwards Excavation Inc (Corporate Seal)

SURETY
Company: _____ (Corporate Seal)

Signature: 
Name and Title: _____
Address: Craig Christman President

Signature: _____
Name and Title: _____
Address: _____

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Thomas Sauer, Alberto Paez

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety, providing the bond penalty does not exceed

Five Million Dollars and no/100 (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment shall continue in force until 10/31/11 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

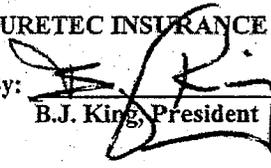
Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 28th day of October, A.D. 2008.

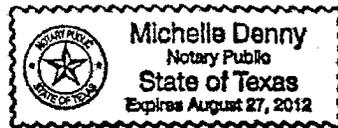
SURETEC INSURANCE COMPANY

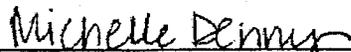
By: 
B.J. King, President



State of Texas ss:
County of Harris

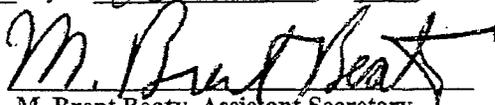
On this 28th day of October, 2008 before me personally came B.J. King, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.




Michelle Denny, Notary Public
My commission expires August 27, 2012

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 28th day of October, 2010, A.D.


M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.



Kreizenbeck Constructors

TRANSMITTAL

Date: **November 10, 2010**

To: Mr. Tom Hellen
City of Hailey
115 Main Street South
Hailey, Idaho 83333

RECEIVED
NOV 10 2010

RE: **Hailey Rodeo Arena Multi-Use Facility** KC Job No: **10-007**

We are sending you:

<i>Copies</i>	<i>Description</i>
2	AIA 101/CMA – 1992 Standard form of Agreement (Petra, Inc.)
1	Performance and Payment Bonds (Petra, Inc.)

Action: For your review, signature, and return.

Please see the attached documents for Petra Inc. Please sign both copies of the Standard form of Agreement, returning one original copy to our office.

Thank you

CC: KC File

Signed: Dena Nelson-Hendren



AIA[®] Document A101/CMa[™] – 1992

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

Bid Package No. 2 – Concrete

AGREEMENT made as of the 19th day of October in the year 2010
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Hailey
115 South Main
Hailey, Idaho 83333

and the Contractor:
(Name, legal status and address)

Petra, Inc.
1097 North Rosario Street
Meridian, Idaho 83642

For the following Project:
(Include detailed description of Project, location, address and scope.)

City of Hailey
Rodeo Grounds Project – Phase I

Excludes:
Work associated with the construction of the Ice Rink
Demolition of existing rodeo grounds
Installation of primary sewer and water utilities

The Construction Manager is:
(Name, legal status and address)

Kreizenbeck, LLC dba Kreizenbeck Constructors
251 East Front Street
Suite 110
Boise, Idaho 83702

The Architect is:
(Name, legal status and address)

Ruscitto/Latham/Blanton Architectural, P.A.
PO Box 419
Sun Valley, Idaho 83353

The Owner and Contractor agree as set forth below.

RECEIVED
NOV 10 2010

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The 1992 Edition of AIA Document A201/CMa, General Conditions of the Contract for Construction, Construction Manager-Adviser Edition, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Int.

AIA Document A101/CMa[™] – 1992. Copyright © 1992 by The American Institute of Architects. All rights reserved. **WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 15:45:17 on 10/22/2010 under Order No.2317669618_1 which expires on 01/17/2011, and is not for resale.
User Notes:

(2019714402)

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

Provide all labor, material, and equipment to complete the building concrete work as noted on the drawings and per the following:

Division 01 – General Requirements
Section 031000 – Concrete Form Work

Section 032000 – Concrete Reinforcement
Section 033000 – Cast-in-Place Concrete

This Contract specifically includes but is not limited to:

- Provide all labor, formwork, concrete material, and accessories to form, place, strip and finish all building concrete in accordance with the construction documents. Provide all concrete scoring, saw-cutting, expansion jointing, keyways, hand-tooled joints or other similar applications as specified in accordance with the construction documents.
- Provide all labor, formwork, concrete material, and accessories to form, place, strip and finish Bleacher foundations and stadium light pole bases in accordance with the construction documents.
- Provide all labor, formwork, concrete materials and accessories to form, place, strip, and finish the concrete bond beams located on top of masonry walls.
- Furnish and install all reinforcement rebar for work provided under this concrete in accordance with the construction documents.
- Furnish and install high strength grout at all structural steel column base plates as required by construction documents.
- Install all anchor bolts and embed (Anchor bolts and embeds provide by others).
- Furnish and install foundation dampproofing at all foundation wall below grade.
- Provide sealants and caulking of concrete joints in accordance with the construction documents.
- Include concrete pumping as required to complete work in this contract.
- Furnish all add mixtures and additives for concrete as required and as conditions dictate for your work.
- Furnish and install below grade rigid insulation at concrete foundations in accordance with construction documents.
- Remove offsite all washout concrete and other concrete debris created by this work.
- Furnish labor and insulated blankets to protect the ground and concrete from freezing as required for your work.
- Furnish all survey work required for this contract. Reference "Construction Facilities and Temporary Controls" for survey provided by Construction Manager.
- All submittals are due within 10 days of notice to proceed.

This Contract specifically excludes:

- Site signage bases.
- Site concrete work (sidewalks, curbs, curb and gutter, extruded curb, etc.)
- Reinforcing steel for masonry.
- Furnish and install vapor barrier and 2" sand for interior slabs.
- Concrete for chain link fence posts and ornamental fence posts.
- Temporary heaters and fuel.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement is the date from which the Contract Time of Section 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed by issuance of a Notice to Proceed.

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User Notes:

(2019714402)

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner, through the Construction Manager, in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than *(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

The Substantial Completion for the Rodeo Arena work is June 30, 2011; as defined in the project schedule.

Portion of Work	Substantial Completion date
Bid Package #2 - Concrete	As identified in the Project Schedule contained in the Project Manual dated September 23, 2010.

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of One Hundred Ten Thousand Dollars and Zero Cents (\$ 110,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

§ 4.3 Unit prices, if any, are as follows:

Description	Price (\$ 0.00)
-------------	-----------------

ARTICLE 5 PROGRESS PAYMENTS

§ 5.1 Based upon Applications for Payment submitted by the Contractor to the Construction Manager, and upon Project Applications and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.3 Provided an Application for Payment is submitted to the Construction Manager not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 25th day of the following month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Construction Manager receives the Application for Payment.

§ 5.4 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as

Init.

the Construction Manager or Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.6.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of Five Percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.7 of the General Conditions;

§ 5.6.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five Percent (5%);

§ 5.6.3 Subtract the aggregate of previous payments made by the Owner; and

§ 5.6.4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 5.7 The progress payment amount determined in accordance with Section 5.6 shall be further modified under the following circumstances:

§ 5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety-Five Percent (95%) of the Contract Sum, less such amounts as the Construction Manager recommends and the Architect determines for incomplete Work and unsettled claims; and

§ 5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

§ 5.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

ARTICLE 6 FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Section 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Project Certificate for Payment has been issued by the Construction Manager and Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Project Certificate for Payment, or as follows:

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

Init.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

The legal rate of interest shall be 8% per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 Temporary facilities and services:

(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)

Phase I Project Manual, Dated September 23, 2010

§ 7.4 Other Provisions:

(Here list any special provisions affecting the Contract.)

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

§ 8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101/CMA, 1992 Construction Manager-Adviser Edition.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201/CMA, 1992 Construction Manager-Adviser Edition.

§ 9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Phase I Project Manual dated September 23, 2010, and are as follows:

Document	Title	Pages
Exhibit A	Contract Document Schedule	2

§ 9.1.4 The Specifications are those contained in the Phase I Project Manual dated as in Section 9.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications Exhibit: Contract Document Schedule, Exhibit A

(Table deleted)

§ 9.1.5 The Drawings are as follows:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings Exhibit: Contract Document Schedule, Exhibit A

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User Notes:

(2019714402)

(Table deleted)

§ 9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
One	October 11, 2010	5

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Contract Document Schedule, Exhibit A

Standard Form of Agreement between Owner and Contractor, AIA Document A101/CMA, 1992

General Conditions of the Contract for Construction, AIA Document A201/CMA, 1992

This Agreement entered into as of the day and year first written above.

OWNER

Russell D. ...

(Signature)

Mayor
(Printed name and title)

CONTRACTOR

[Signature]

(Signature)

Jeremy Frank PRESIDENT/CEO
(Printed name and title)

Init.

CONTRACT DOCUMENT SCHEDULE (EXHIBIT A)
Hailey Rodeo Arena Multi-Use Facility – PHASE I
791 Main Street South
Hailey, Idaho 83333

KC PROJECT NO. 10-007
 October 2010

PROJECT DOCUMENTS as issued by Ruscitto/Latham/Blanton Architectura, P.A. and prepared by the following project team:

Architect – Ruscitto/Latham/Blanton Architectura, P.A.
 Civil Engineer – Galena Engineering
 Geotechnical Engineering – Geoengineers, Inc.
 Structural Engineer – Ruscitto/Latham/Blanton Architectura, P.A.
 Mechanical Engineer – ES2
 Electrical Engineer – Paul Stoops Associates

PROJECT MANUALS

Phase I Project Manual – dated September 23, 2010

ADDENDA:

Addendum No. One dated October 11, 2010 (5 pgs)

DRAWINGS – dated September 23, 2010

ARCHITECTURAL / STRUCTURAL

1.0	Project Information	2.0	Site Plan
C2	Survey	C3	Site Utilities Plan
3.0	Not Used	4.0	Main Floor Plan
4.1	Second Level Floor Plan	4.2	Roof Plan
4.3	Main Level Enlarged Floor Plan	4.4	Main Level Enlarged Floor Plan
4.5	Main Level Enlarged Floor Plan	4.6	Main Level Enlarged Floor Plan
4.7	Main Level Enlarged Floor Plan	5.0	Building Section / Elevations
5.1	Building Sections	6.0	Elevations
6.1	Enlarged Elevations	6.2	Enlarged Elevations
6.3	Interior Elevations	6.4	Interior Elevations
7.0	Not Used	8.0	Not Used
9.0	Stairs and Ramps	9.1	Stairs and Ramps
10.0	Room Finish Schedule	10.1	Door and Window Schedule
D1.0	Not Used	D1.1	Not Used
D2.0	Foundation Details	D3.0	Framing Details
D3.1	Framing Details	D4.0	Not Used
D5.0	ADA Details	S1.0	Structural Specification
S1.1	Structural Special Inspection Specification	S2.0	Foundation Plan
S2.1	North Foundation Plan	S2.2	East Foundation Plan
S2.3	South Foundation Plan	S3.0	Roof Framing Plan
S3.1	North Roof Framing Plan	S3.2	East Roof Framing Plan
S3.3	South Roof Framing Plan	S4.0	Bleacher Framing Plan
S4.1	North Framing Plan	S4.2	East Bleacher Framing Plan
S4.3	South Bleacher Framing Plan		

ELECTRICAL

E2.1	Main Level Electrical Plan	E3.1	Emergency / Egress Lighting Plan
E3.2	Upper Level Electrical Plan		

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Petra Incorporated
1097 N. Rosario St.
Meridian, ID 83642

OWNER (Name and Address):

City of Hailey
115 South Main
Hailey, ID 83333

SURETY:

Fidelity and Deposit Company of Maryland
1400 American Lane, Tower I, 19th Floor
Schaumburg, IL 60196-1056

CONSTRUCTION CONTRACT

Date: October 19, 2010

Amount: \$ 110,000.00 One Hundred Ten Thousand Dollars and 00/100 DOLLARS

Description (Name and Location):

City of Hailey, Rodeo Ground Project-Phase I: Bid Package #2-Concrete

BOND

Date (Not earlier than Construction Contract Date): October 27, 2010

Amount: \$ 110,000.00 One Hundred Ten Thousand Dollars and 00/100 DOLLARS

Modifications to this Bond:

None See Page 3

CONTRACTOR AS PRINCIPAL

Company: Petra Incorporated

SURETY

Company: Fidelity and Deposit Company of Maryland

Signature: _____

Corporate Seal

Name and Title: _____

Jeremy Frank
PRESIDENT / CEO

Signature: _____

Corporate Seal

Name and Title: _____

Brenda J. Smith
Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

Payne Financial Group Inc.
960 Broadway Avenue, Suite 100
Boise, ID 83706
208-424-2900

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Printed in cooperation with the American Institute of Architects (AIA) by Fidelity and Deposit Company of Maryland
language used in AIA Document A-312, December 1984 Edition.

vouches that the language in the document conforms exactly to the

PRF76002ZZ0601f
Without Modifications

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Sub-paragraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Sub-paragraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it

may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contractors, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction

shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the

Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page).

CONTRACTOR AS PRINCIPAL
Company: _____ (Corporate Seal)

SURETY:
Company: _____ (Corporate Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

Address:

Address:

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Petra Incorporated
1097 N. Rosario St.
Meridian, ID 83642

OWNER (Name and Address):
City of Hailey
115 South Main
Hailey, ID 83333

SURETY:

Fidelity and Deposit Company of Maryland
1400 American Lane, Tower I, 19th Floor
Schaumburg, IL 60196-1056

CONSTRUCTION CONTRACT

Date: October 19, 2010

Amount: \$110,000.00 One Hundred Ten Thousand Dollars and 00/100

DOLLARS

Description (Name and Location): City of Hailey, Rodeo Ground Project-Phase I: Bid Package #2-Concrete

BOND

Date (Not earlier than Construction Contract Date): October 27, 2010

Amount: \$ 110,000.00 One Hundred Ten Thousand Dollars and 00/100

DOLLARS

Modifications to this Bond:

None See Page 3

CONTRACTOR AS PRINCIPAL

Company: Petra Incorporated

Signature: _____

Name and Title: _____

J. Frank
Corporate Seal
JERRY FRANK PRESIDENT/CEO

SURETY

Company: Fidelity and Deposit Company of Maryland
Corporate Seal

Signature: _____

Name and Title: Brenda J. Smith
Attorney-in-Fact

Brenda J. Smith

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

Payne Financial Group Inc.

960 Broadway Avenue, Suite 100

Boise, ID 83706

208-424-2900

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

Printed in cooperation with The American Institute of Architects (AIA) by Fidelity and Deposit Company of Maryland
the language used in AIA Document A-312, December 1984 EDITION.

Fidelity and Deposit Company of Maryland
vouches that the language in the document conforms exactly to

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

.1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

.2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

.3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related sub-contracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services

required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

Paragraph 4 is amended to insert sub-paragraph 4.3, which states:

4.3 Claimants have furnished to Surety proof of claim duly sworn to by Claimants with adequate supporting documentation proving the amount claimed is due and payable.

Paragraph 5 shall be amended to delete the word "or" and insert the word "and" in its place.

Paragraph 6 and its sub-paragraphs 6.1 and 6.2 shall be deleted in their entirety and replaced with the following:

When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall, within 90 days of the date when claimant finally completed its satisfactions of the conditions of Paragraph 4 notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant's sole remedy shall be the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

Paragraph 12 shall be amended to add the following paragraph:

CLAIM NOTICE for the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND INSURANCE COMPANY and/or AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY must be sent to the following address: Contract Surety Bond Claims, c/o ZURICH, 1400 American Lane, Schaumburg, IL 60196.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL (Corporate Seal)
Company:
Signature: _____
Name and Title:
Address:

SURETY: (Corporate Seal)
Company:
Signature: _____
Name and Title:
Address:

Printed in cooperation with The American Institute of Architects (AIA) by Fidelity and Deposit Company of Maryland
Fidelity and Deposit Company of Maryland vouches that the language in the document conforms exactly to
the language used in AIA Document A-312, December 1984 EDITION.

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint **Brenda J. SMITH, Jon M. RICHE, Kelley A. MACPHERSON and James S. MACPHERSON, all of Boise, Idaho, EACH** its true and lawful agent and Attorney in Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings, and the execution of such bonds or undertakings** in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of Brenda J. SMITH, Jon M. RICHE, Kelly A. MACPHERSON, James S. MACPHERSON, dated May 30, 2006.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 1st day of October, A.D. 2009.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

By:

David S. Hewett

Gregory E. Murray Assistant Secretary

David S. Hewett

Vice President

State of Maryland }
City of Baltimore } ss:

On this 1st day of October, A.D. 2009, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require; or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 27 day of October, 2010.



Assistant Secretary

AGENDA ITEM SUMMARY

DATE: November 22, 2010

DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: 

SUBJECT: River Street – supplement to preliminary design for downtown River Street.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

One of the desired outcomes of the ICDBG application for River Street improvements is to have a design that can be used by the city regardless of whether the grant is awarded. An estimate was requested of Harmony Design and Engineering for cross sections, presented in artistic sketch form, that show how the downtown commercial portion of River Street would transition into the residential areas to the north and south. These concepts would be displayed with the preliminary design for downtown River Street to provide a vision for the entire length of River Street and used to facilitate discussions and efforts to fund additional improvements to River Street.

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: This would be paid for from the Planning Department's Professional and Engineering Services line item.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Motion to approve contact with Harmony Design for supplementary work related to River Street improvements.

ADMINISTRATIVE COMMENTS/APPROVAL:

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

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

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

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

SERVICE ORDER



Date: October 19, 2010

Project: Hailey River Street

SCOPE OF SERVICES

This Scope of Services includes preparing conceptual plans for River Street from McKercher to Galena and Croy to Cedar which includes approximately 13 blocks. Conceptual plans will include 3 typical street cross sections which will be presented in artistic rendering form. Thought will be given to the transitions between commercial and residential areas and developing a residential cross section that retains the residential feel of the neighborhood. This scope includes coordination with the City but does not include any public hearings or input. These typical cross sections can be used as a guideline for developing detailed plans for each block in the future.

Estimated Fee: \$1,500 – 1,900

This AGREEMENT is between _____ (Client) and Harmony Design, Inc. for services as described above and subject to the following.

Compensation

The fee for the listed scope of services will be on a TIME AND MATERIALS basis, at the rates on the attached standard fee schedule.

Invoicing

All invoices are considered to be due and payable upon receipt unless otherwise set forth in this Agreement. Each invoice will represent services completed during the prior month unless otherwise noted on the invoice. Payment not received within 30 days of the invoice date will be considered past due. All past due invoices will be subject to a 1.5 % per month late charge applied to outstanding balances including late charges. Payments shall be first applied to late charges and then to the principal unpaid amount. If the invoice, including late charges due, is not paid in full within 60 days of the invoice date, Harmony Design Inc. may cease all services on the project and may commence the exercising of its legal remedies. These include, but are not limited to, mechanics' lien rights under applicable law.

The Client shall notify Harmony Design Inc. in writing within 10 calendar days of the date of the invoice if the Client objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. Invoices not contested within 10 calendar days are assumed to be accurate and acceptable to all parties, and all rights to withhold payment shall be forfeited after that time. This Agreement shall authorize Harmony Design Inc. to collect any fees and expenses incurred, including reasonable attorney's fees as well as any time billed by Harmony, at our current standard fee schedule, related to the collection of any amounts due from the Client.

Payment under this agreement is not contingent upon: 1) the Client being reimbursed by any third party; 2) upon the Client obtaining financing; or 3) completion of the overall project.

Information Provided by Others

All data and information provided to Harmony Design Inc. through the Client will be assumed to be complete and accurate unless otherwise informed by the Client. Harmony Design Inc. will endeavor to identify obvious errors and bring them to the attention of the Client; however, Harmony Design Inc. cannot be responsible for the work of others unless the Client has authorized an independent analysis of the data and information provided.

Ownership of Documents

Drawings, Plans, Specifications, and Reports prepared by Harmony Design, Inc. are, and shall remain, the property of Harmony Design, Inc., whether the project is executed or not. The Client shall be permitted to retain copies of said Drawings, Plans, Specifications, and Reports including reproducible copies, for information and reference in connection with the Client's use on this specific project only. Unauthorized duplication of details, designs and drawings for project not specified in the Agreement shall be a violation of copyright laws.

Third-Party Exclusion

The Agreement shall not create any rights or benefits to parties other than Client and Harmony Design Inc, except such other rights as may be specifically called for herein.

Engineers Certificate of Merit

The Client shall make no claim for professional negligence, either directly or in a third party claim, against Harmony Design Inc unless the Client has first provided Harmony Design Inc with a written certification executed by an independent design professional currently practicing in the same discipline as the Harmony Design Engineer and licensed in the applicable state. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an Engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to the Engineer not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

Limitation of Liability

In recognition of the relative risks and benefits of this project to both the Client and Harmony Design Inc., these risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to specific limits of liability. The aggregate limits of liability of Harmony Design Inc., its consultants, and subconsultants on the project shall apply to any and all injuries, claims, losses, costs, or damages whatsoever arising from, resulting from, or in any way related to the project from any and all cause or causes. Such causes include, but are not limited to, Harmony Design Inc's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability based on contract, tort or statute. The total aggregate liability of Harmony Design Inc., their consultants, and subconsultants to the Client, owner and anyone claiming by, through or under the Client or owner shall not exceed \$50,000 or the amount of Harmony Design, Inc.'s compensation, whichever is less (higher limits are available; Client should speak with Harmony Design Inc. in that regard). The Client agrees that any claim filed against Harmony Design Inc by Client, will be filed solely against Harmony Design Inc or its successors or assigns, and that no individual person shall be made personally liable for damages, in whole or in part.

Conflict Resolution

All claims, disputes, or controversies arising out of, or in relation to the interpretation, application, enforcement or implementation of this Agreement or provision of the services indicated herein shall first be attempted to be resolved through non-binding mediation. The parties further agree that the project Owner will require, as a condition for participation in the project and their agreement to perform labor or services, that all contractors, all subcontractors at all tiers, and all suppliers whose portion of the work amounts to five thousand dollars (\$5,000) or more, and their insurers and sureties, shall agree to this procedure. If a party does not agree to mediation, that party shall hereby forfeit the collection of any attorney fees arising from any subsequent legal actions.

Termination

Either party may terminate this Agreement by providing seven (7) days written notice in the event of a substantial failure by one party through no fault of the other party to perform in accordance with the terms and conditions of this agreement. Either party may terminate this Agreement without cause by fifteen (15) days written notice to the other.

Upon termination, payment will be made to Harmony Design, Inc. for all services performed and reimbursable expenses up to the date of the termination. Deliverables will be turned over to the Client upon full payment. Any deliverables released prior to completion of work shall absolve Harmony Design, Inc. of all liability associated with the project

IN WITNESS WHEREOF, this agreement, including all exhibits and attachments, has been fully executed on behalf of Harmony Design Inc by its duly authorized officers, and the Client has caused the same to be executed in its name and in its behalf by its duly authorized officers as of the date indicated below.

Client Name: _____

Harmony Design, Inc.

Signature: _____

By: _____

Printed name: _____

Title: _____

Date Signed: _____

Date Signed: _____

Billing Address: _____

Phone #: _____

Fax#: _____

Email: _____

HARMONY DESIGN & ENGINEERING

SCHEDULE OF RATES

PROFESSIONAL SERVICES

Professional Engineer Review	\$110 /hr
Project Management	\$90 /hr
Conceptual Planning	\$85 /hr
Engineering	\$80 /hr
CAD Drafting	\$55 /hr
Clerical	\$45 /hr

DIRECT EXPENSES

Mileage	\$0.55 /mile
B&W Copies (8 ½" X 11")	\$0.15 /copy
Color Copies (8 ½" X 11")	\$0.90 /copy
B&W Prints (24" X 36")	\$4.00 /sheet
Color Prints (24" X 36")	\$6.00 /sheet
B&W Mylar Sepia (24" X 36")	\$12.00 /sheet
CD for electronic files	\$2.50 /each

Reimbursable expenses such as outside reproduction, deliveries, postage, sub-consultant fees, and travel costs are charged as listed above or at cost plus ten percent.

*These Professional Service Rates are considered confidential and shall not be released to a third party without written permission of Harmony Design, Inc.
Rates are subject to change.*

Effective January 1, 2009

THE HISTORY OF THE UNITED STATES

CHAPTER I

THE EARLY PERIOD

The first European settlers in North America were the Pilgrims, who arrived in 1620 on the Mayflower. They established the Plymouth colony in Massachusetts. Other early colonies were founded in Virginia, Maryland, and Pennsylvania. The Pilgrims faced many hardships, but they survived and their descendants became the core of the American people.

The Pilgrims were a group of English Puritans who sought religious freedom. They sailed on the Mayflower in 1620 and landed in Plymouth, Massachusetts. They faced a harsh winter and many died, but they survived and their descendants became the core of the American people. The Pilgrims were a group of English Puritans who sought religious freedom. They sailed on the Mayflower in 1620 and landed in Plymouth, Massachusetts. They faced a harsh winter and many died, but they survived and their descendants became the core of the American people.

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AGENDA ITEM SUMMARY

DATE: 11/16/2010 **DEPT.:** Historic Preservation Commission / Admin **DEPT. HEAD SIGNATURE:** _____

SUBJECT:

Janice Seagraves Foundation
Application Letter for Hailey Rodeo Park Interpretive Center

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The Hailey Historic Preservation Commission and city staff have prepared the attached application letter to the Janice Seagraves Foundation to fund preliminary design of the Hailey Rodeo Park Interpretive Exhibit entitled *Rodeo Stories: A Small Town Legacy*. Successful acquisition of this funding, and completion of the rodeo research being conducted by Florence Blanchard, will allow the project team to commence Phase Two of the project – the preliminary design of the exhibit. The project team also intends to submit a grant application to the Idaho Humanities Council in January, to assist with either Phase Two or Phase Three, depending upon funding levels attained.

Phase Three involves final design, fabrication and installation, which would commence in the winter of 2011/2012, contingent on securing a National Endowment for the Humanities grant, which will be submitted next summer. The work is phased to allow the development of the project and associated work products that will be necessary to prepare a competitive NEH application.

In addition to the above-described grant strategy, the team is pursuing a limited number of private foundations and individual donations for the interpretive exhibit. The Janice Seagraves Foundation is one of the private foundations identified. If success is realized with foundations and private donors, the project schedule can be expedited.

At this time the HPC and city staff request authorization to submit the grant application letter as presented.

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 authorize submission of grant application letter.

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 # _____

November 19, 2010

The Janice Seagraves Foundation
PO Box 1292
Twin Falls, ID 83303

Subject: Grant Proposal for
Rodeo Stories: A Small Town Legacy

Dear Janice Seagraves Foundation:

The City of Hailey Historic Preservation Commission (HPC) respectfully presents this proposal to the Janice Seagraves Foundation for a humanities project at the new Hailey Rodeo Park. The project is an interpretive exhibit called *Rodeo Stories: A Small Town Legacy*.

Project Description

Rodeo Stories: A Small Town Legacy will tell the story of how the Hailey rodeo has evolved through the years and its impact and importance in the development of Hailey. It is envisioned that these stories, like all stories, have threads that reach into the town's broader history, thereby extending the breadth of the storytelling beyond the boundaries of the rodeo site. Most of the Hailey community is unfamiliar with the story of the rodeo site prior to 1949, and these early stories will also be included in the project. The project includes historical research and documentation, exhibit design, fabrication and installation.

The primary objective of the project is to preserve, celebrate and communicate the history of one of Hailey's, and the West's, most valuable cultural assets: the rodeo. The rodeo is an icon of western culture, and the City of Hailey HPC and Hailey citizens see this project as an opportunity to document and explore the role the Hailey rodeo has played in Hailey society, in Idaho history and in the larger context of the American West.

The proposed exhibit includes historic photographs, oral histories, interpretive displays, dioramas and artifacts. Exterior interpretive displays and elements will also be incorporated at the entryways to the interpretive center.

Project Location

The project is located at the site of the new Hailey Rodeo Park, the largest public works project to be undertaken within the city for many years. The Hailey Rodeo Park lies along Hailey's Main Street, as one enters Hailey proper from the south. This site is the location of Hailey's original rodeo arena. Hailey's historic *Days of the Old West Rodeo* was founded in 1949, and is currently one of Hailey's largest tourist events each year. The old arena was structurally unsound and

noncompliant with ADA requirements, leading to a new master plan for the rodeo grounds property that involved demolishing the old arena and building a new arena, building an interpretive center attached to the rodeo arena, adding a separate ice rink, and expanding Hailey's existing world class skatepark.

The Hailey Rodeo Park Interpretive Center, with 768 square feet of gallery space, is located at this major public facility and will be the permanent home of the proposed interpretive exhibit. Please see the attached site plan, as well as floor plan and elevations for the interpretive center.

Detailed Scope of Work

In Phase I (currently underway), the Hailey HPC is working with Florence Blanchard, the project researcher, to conduct interviews, collect existing documented stories, Hailey historical information and photographs from known sources, such as the Mallory Collection of historic photos in the Hailey Public Library; and documents, information and artifacts in the Blaine County Historical Museum, Community Library Association Regional History Department (Ketchum) and Idaho State Historical Society Public Archives and Research Library. A report of findings and recommendations will be prepared. The team will assess this documentation and make an initial determination of stories and items of high value to the project.

Also in Phase I, the Community Library Association Regional History Department has agreed to assist with completion of six oral histories for the project. The team anticipates interviews with a number of Sawtooth Rangers (rodeo founders and managers since 1947) and a number of long-time Hailey citizens with connections to the rodeo. The City of Hailey HPC would work with the Community Library to plan and conduct the interviews. The interviews would be transcribed and indexed and would become part of the permanent collection in the Community Library Association Regional History Department. A second copy of all interview materials will be kept in the permanent collection of the Hailey Public Library. The team anticipates using quotes, both written and audible, in the interpretive exhibit.

In Phase II, the Hailey HPC will work with an illustrator and an exhibit design and fabrication firm to complete preliminary and final designs for the interpretive center displays. Evelyn Phillips has joined the team to assist with design of two-dimensional exhibits involving text, illustrations and photographs. The exhibit design firm would be selected through a bid process.

Once the designs are complete and approved, the project moves into fabrication and installation. Completion of the exhibit installation will be celebrated with an open house, inviting the community and donors to attend.

Project Importance

The Hailey community has deep cultural roots in the Hailey rodeo, and it is essential that the history of the site be preserved, celebrated and communicated. In the spring and summer of 2009, Madeline Buckendorf Consulting, LLC, performed an intensive-level survey and provided historic documentation for the Hailey rodeo grounds property. This survey was made possible by a CLG grant from the Idaho State Historic Preservation Office. The Historic Sites Inventory Report states that the rodeo grounds are "historically significant under Criterion A, for its role in recreation and entertainment in Blaine County, as well as its role in the community development of Hailey. The structures that function for the rodeo reflect the area's longtime ranching history and nostalgia for "cowboy" traditions. It also exemplifies the role rodeo activities played in

community development of Hailey during the twentieth century.” While it was determined that siting, safety and ADA issues precluded the preservation of the structure, Hailey city officials, the HPC and the Hailey community are adamant that the history of the rodeo and the rodeo site be preserved, celebrated and communicated as a condition of building a new rodeo facility.

In 1903, the land presently occupied by the rodeo grounds and school sports fields was deeded to the City of Hailey. Civic leaders used the deeded property for a park (called Wertheimer Park), racetrack, and ball field over the next decades. In 1947, the Sawtooth Rangers Riding Club was formed, and planned a small rodeo event for the site. The rodeo was so successful the Rangers developed a leasing arrangement with the city and constructed a more permanent structure on the site the following year. In 1949, the Sawtooth Rangers expanded the rodeo to a two day event coinciding with Hailey’s annual Fourth of July parade – the *Days of the Old West Rodeo* was born. Over the last 20 years this professional-level, award-winning rodeo has drawn more than 3,000 people annually. The rodeo grounds are a monument to the region’s ranching heritage, as well as a reminder of the cooperative community efforts that helped shape Hailey’s history and development.

The proposed exhibit will help to preserve this important aspect of Idaho’s history and culture by making the rodeo’s impact and meaning understandable to the citizenry. People from all walks of life will see this exhibit because the interpretive center is located adjacent to the new arena, ice rink and skatepark facilities. In addition to rodeo participants and fans, youth, sports fans and participants, and a host of other venue users, residents and tourists, will likely visit the interpretive center and see the exhibit, which will be open year round.

Lasting Legacy

Rodeo Stories: A Small Town Legacy will be an integral part of the new Hailey Rodeo Park. The stories, photographs, artifacts, and dioramas will tell how this particular geographic location in Hailey has represented a focal point for community involvement and community pride. The exhibit is intended to provide a lasting legacy, keeping alive the rich history and tradition that has been such an important part of this community.

Project Team

The project team includes:

- Rob Lonning, HPC
- Joan Davies, HPC
- Rachel Wolfe, HPC
- Lorna Hazelton, Sawtooth Rangers
- Evelyn Phillips, Project Illustrator
- Heather Dawson, Hailey City Administrator
- Tracy Anderson, Hailey Grant Administrator
- Florence Blanchard, Project Research
- Jenny Emery Davidson, Project Historian
- Exhibit Design Firm (TBD)

Grant Funds Are Critical to Overall Funding Package

Acquiring private foundation funds is critical to the overall funding package for this project. The Hailey Rodeo Park construction has a tight budget, largely acquired through a bond that was approved by Hailey voters earlier this year. The bond issue included funding for the interpretive center structure, but did not include funding for the interpretive exhibit. The project broke ground this summer, with fundraising for the project ongoing.

The Hailey Capital Projects Fund is a finite fund, without a consistent replenishing revenue stream. Hailey has \$30 million dollars worth of capital infrastructure projects that need to be completed in the city and a Capital Projects Fund of less than \$3 million. Hailey's policy is to use the Capital Projects Fund as a leveraging fund to secure grants to complete these projects. Hailey will allocate a portion of the Capital Project Fund to the interpretive exhibit, but that allocation must be leveraged with other funding.

In addition to a recent Idaho State Historical Society grant that is funding the project research (along with a dollar-for-dollar match by the city), Hailey has plans to submit a grant application to the Idaho Humanities Council for this project. Hailey also plans to submit a grant application to the National Endowment for the Humanities under its *America's Historical and Cultural Organizations: Implementation Grants*. And Hailey will seek a number of other foundation and individual sponsors for the project. A grant award from the Janice Seagraves Foundation will improve Hailey's chances of success with these applications and fundraising efforts.

This is a large exhibit project, with multiple sources of funding required. The receipt of a grant award is strategically important to success with other funding sources, and Hailey is confident of acquiring all funding necessary to complete the project.

The funding for the Hailey Rodeo Park, which includes the interpretive center structure, is in place. Janice Seagraves Foundation funding would allow Hailey to commence the preliminary design work for this important cultural heritage project.

Project Benefits

Without this project, the history of the Hailey rodeo has the potential to fade into anonymity. Newcomers who enjoy the new rodeo arena will have little, if any, idea of how the Hailey rodeo was born and how it evolved and how it both reflected and shaped the history of the town and the area. Old-timers may remember and tell rodeo stories, but if those stories are not captured soon, they could be lost forever. *Rodeo Stories: A Small Town Legacy* will assist the Hailey HPC in better preserving this part of Idaho's history and culture.

The project benefits the community by preserving an important part of its history, and making that history accessible to current and future generations of Hailey citizens and visitors.

The project benefits the community, region and state by preserving the history of an icon of Western culture: the rodeo. Rodeo has played a large part in the rich history of towns throughout Idaho. Those who visit Hailey from other parts of Idaho can enjoy and learn from this exhibit for many years to come, and perhaps it will give these viewers pause to remember the rodeos of days gone by in their own home towns, or to cherish those rodeos that are still in operation.

The project benefits the community, region and state because it is a heritage tourism attraction. Hailey, as part of the larger Sun Valley area, relies on tourism as part of its economic base. The many tourists who already visit Idaho, the region or Hailey would have one more reason for

visiting. And the ongoing development of heritage tourism assets throughout the state makes it more marketable as a tourist destination.

Projected Project Timeline

Rodeo Stories: A Small Town Legacy must be executed to coincide with the construction of the facilities in the Hailey Rodeo Park (new arena, new ice rink, expanded skatepark and new interpretive center). The current schedule has the arena and ice facility being complete prior to the July 4, 2011 rodeo. The skatepark expansion and interpretive center construction would commence following the July 4, 2011 rodeo with completion in the spring of 2012.

Project Task

Timeline

Task 1 Project Management & Administration

10/01/10 – 08/31/12

Phase I

Task 2 Research & Documentation

10/01/10 – 04/30/11

Task 3 Oral Histories

01/01/11 – 04/30/11

Submit Idaho Humanities Council Grant (Award 3/11)

1/15/11

Phase II

Task 4 Preliminary Exhibit Design (80%)

04/01/11 – 07/31/11

Submit National Endowment for the Humanities Grant (Award 4/12)

8/15/11

Task 5 Final Exhibit Design

04/01/12 – 05/31/12

Task 6 Fabrication & Installation

06/01/12 – 07/31/12

Task 7 Dedication Celebration

August 2012

Note: If adequate funding is secured early in the schedule, the project could be completed much sooner.

Budget, Cash Match, In-Kind and Use of Grant Funds

Item	Grant Funds Requested	Hailey Match *	In Kind	Total
Personnel				
Project Manager (Volunteer) Rob Lonning 160 hrs @ \$25/hr	0	0	4,000	4,000
Grant Administrator/Project Support (City Staff) Tracy Anderson / 160 hrs @ \$28/hr	0	4,480	0	4,480
Project Support (Volunteer) Joan Davies 40 hrs @ \$7.25/hr	0	0	290	290
Project Support (Volunteer) Rachel Wolfe 40 hrs @ \$7.25/hr	0	0	290	290
Project Support (Volunteer) Lorna Hazelton 40 hrs @ \$7.25/hr	0	0	290	290
<i>Subtotals</i>	0	4,480	4,870	9,350
Tasks				
Research & Documentation	0	5,000	0	5,000
Oral Histories / 6 @ 25 hours x \$20/hour	0	0	3,000	3,000
Preliminary Design (80%) 768 sq. ft. x \$75/sq. ft.	42,600	10,000	5,000	57,600
Final Design 768 sq. ft. x \$25/sq. ft.	0	19,200	0	19,200
Fabrication & Installation 768 sq. ft. x \$100/sq. ft.	0	76,800	0	76,800
<i>Subtotals</i>	42,600	111,000	8,000	161,600
GRAND TOTALS	42,600	115,480	12,870	170,950

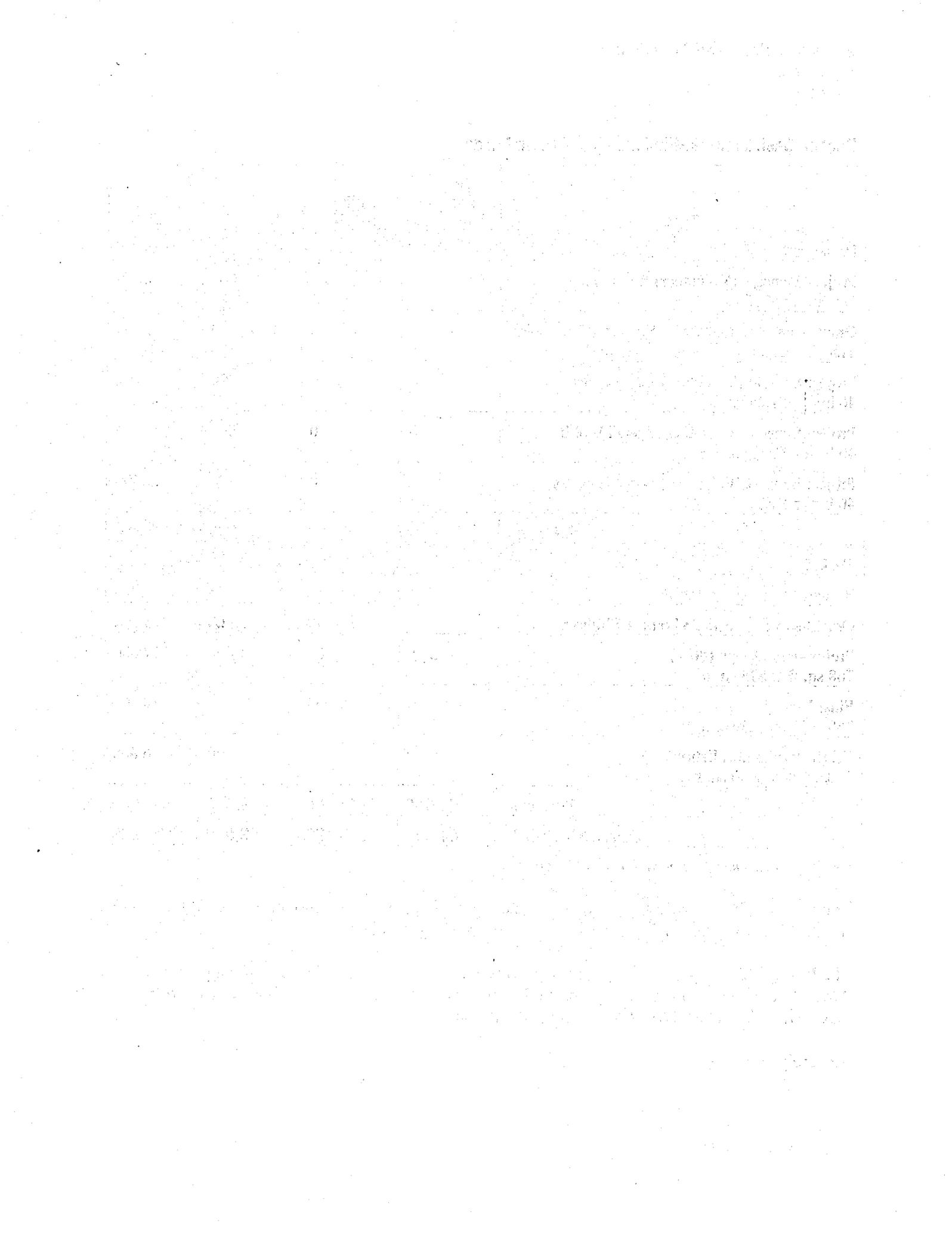
* Hailey's match may be funded through other grants or donations.

The Hailey HPC respectfully requests consideration of a grant in the amount of \$42,600 from the Janice Seagraves Foundation, as documented in the budget table above.

The Hailey HPC is grateful for your review of this proposal. Please feel free to contact me at 208-788-4221, ext. 26 with any questions you may have. You may also wish to contact Joan Davies at 208-788-2348 or Rob Lonning at 208-788-9654.

Sincerely,

Tracy Anderson
Grant Administrator



AGENDA ITEM SUMMARY

DATE: 11/22/10 DEPARTMENT: PW DEPT. HEAD SIGNATURE: 

SUBJECT: Motion to approve the ~~revised~~ Tree Committee By-laws.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The ~~originally approved~~ Tree Committee By-laws were revised to reflect the changes made to Ordinance 1013 to reflect a revision in Article 2.1 – Number of Members, Appointments, Etc. The Tree Committee voted at their November 11, 2010 meeting to recommend to the Hailey City Council adoption of these By-laws.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: Tom Hellen Phone # 788-9830 Ext 14
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:

ADMINISTRATIVE COMMENTS/APPROVAL:

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

ACTION OF THE CITY COUNCIL:
Date _____

City Clerk _____

FOLLOW-UP:
*Ord./Res./Agmt./Order Originals: Record *Additional/Exceptional Originals to: _____
Copies (all info.): _____ Copies (AIS only)

BYLAWS FOR THE HAILEY TREE COMMITTEE

PURPOSE

These bylaws provide direction to the members of the Hailey Tree Committee in the performance of their duties.

ARTICLE I - GENERAL PROVISIONS

The following statutes, ordinances and rules shall govern the Hailey Tree Committee, hereinafter referred to as "the Committee":

1.1 Applicable State Statutes and Local Ordinances and Rules.

To the extent that they remain in force and in effect or as they are amended, the Committee and its members shall be governed by state statutes and local ordinances and policies including the following:

- a. State statutes applying to public boards, members and officials, and those dealing with disclosure.
- b. The Hailey Zoning Ordinance, the Hailey Subdivision Ordinance, the Hailey Annexation Ordinance, and the Hailey Comprehensive Plan, all as approved by the Hailey City Council.

1.2 Requirements of Familiarity with State Statutes and Local Ordinances and Rules Affecting the Committee.

Upon taking office, all members of the Committee shall familiarize themselves with the forgoing and, while in office, shall maintain such knowledge, including knowledge of amendments and additions, and shall be governed thereby in the conduct of Committee affairs.

1.3 Rules of the Committee to be Available at the office of the Hailey City Clerk.

An official copy of the Bylaws of the Committee shall be available as a public record from the Hailey City Clerk. Additional copies shall be provided to the members of the Committee and made available to the public upon request.

ARTICLE II - MEMBERS

2.1 Number of Members. Appointment. Etc.

The Committee shall consist of no more than seven (7) and no less than five (5) voting members; each member shall be appointed by the Mayor and approved by the City Council, have been a resident of Blaine County for two (2) years prior to appointment to the Committee and shall be a resident of the City of Hailey at the time of appointment; except that one (1) member may reside outside the corporate limits of the City of Hailey, but within the City's Area of Impact; and that one (1) member may reside outside the City's Area of Impact but be employed in the community as a Tree Professional, such as a Certified Arborist or Certified Community Forester.

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Each member shall serve for a term of three (3) years. The terms shall be staggered and shall be filled in the same manner as original appointments, but replacements shall serve only until the expiration of the original term.

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¶ Each member must remain a resident of the City, or, in the case of the City's Area of Impact, within the impact area, during the term of his or her membership on the Committee.

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2.2 Causes for Removal from the Committee.

Causes for removal of members from the Committee by the Mayor and City Council may include, but are not limited to:

- a. Failure to maintain reasonable familiarity with state statutes and local ordinances and rules affecting the Committee, or failure to be governed thereby.
- b. Failure to disclose conflict of interest for purposes of disqualification when a member has a personal or monetary interest in the matter involved, or will be directly affected by a decision of the Committee.
- c. When a member becomes incapacitated for the office for a protracted period, or moves from the City of Hailey or the Area of Impact or becomes for some other reason no longer qualified for office and fails to resign.
- d. Failure to attend three consecutive regular meetings, or three of any seven consecutive meetings, without the recorded consent of the Chair. The Chair can recommend removal of the Committee member to the Hailey City Council and Mayor.

2.3 Resignations and Removal.

Members proposing to resign shall give reasonable notice of such intent to the Chair, stating the effective date of resignation.

2.4 Vacation of Office. Appointment of New Members.

When a member dies, resigns, or is otherwise removed, or when the term of a member is 45 days from its scheduled expiration, the Committee Chair will immediately notify the Mayor that a vacancy either exists or could exist. The vacancy may be advertised in the official newspaper of the City as necessary to secure letters of interest and résumés from interested Hailey/ACI residents. The vacancy shall be filled by appointment of the Mayor with the approval of the City Council (see Article II Section 2.1) upon selection of a satisfactory candidate.

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ARTICLE III - OFFICERS, COMMITTEES, STAFF, DUTIES

3.1 Regular Election of Chair, Vice Chair

Annually, as the first item of business at the first regular meeting of the Committee at which a quorum is present, the Committee shall elect a Chair and Vice Chair.

3.2 Succession of Vice Chair to Office of Chair.

Should the Chair resign or be removed, the Vice Chair shall succeed to the office for the

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remainder of the original one year term. Should the Vice Chair resign, be removed, or succeed to the office of Chair, a special election shall be held to fill the vacancy of the Vice Chair until the expiration of the original one-year term. Said election shall occur at the next regularly scheduled meeting of the Committee at which a quorum is available.

3.3 Duties of the Chair and Vice Chair: Appointment of Temporary Chair to Preside at Meetings.

The Chair shall preside at all meetings and hearings. If the Chair is absent or unable to preside, the Vice Chair shall preside. If both are absent or unable to preside, the members present shall elect from among their number a Temporary Chair to preside. The Temporary Chair shall abide by all rules and policies set forth herein.

The Chair shall maintain order and conduct the meeting in accordance with Robert's Rules of Order.

The Chair shall set the agenda for each meeting. The agenda will generally include issues scheduled for review by the decision making bodies of the City, ongoing parks and land planning, and topics requested by members of the Committee or the public at large.

3.4 Appointment of Committees.

The Chair may appoint standing or ad hoc committees as may be found necessary to successfully and efficiently carry out the functions of the Committee.

ARTICLE IV - CONDUCT OF COMMITTEE MEMBERS

4.1 Conflict of Interest.

A conflict of interest shall be as defined by Idaho Code Section 59 - 701, et seq. as amended.

ARTICLE V - MEETINGS

5.1 Meetings.

Meetings of the Committee will be held at such time and place as is established by the Committee and at least one time in at least nine months of the calendar year. Notice of Meetings shall be posted at City Hall no less than five days prior to the meeting.

5.2 Open to the Public.

All meetings of the Committee are open to the public.

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5.3 Cancellation.

If no business is scheduled before the Committee, or if it is apparent that a quorum of the Committee will not be available, the Chair may cancel any meeting by giving notice to all members and presenters not less than 48 hours before time set for such meeting.

5.4 Quorum.

A quorum of the Committee shall consist of a simple majority of members. An affirmative vote of a simple majority of the present members of the Committee shall decide all matters under consideration. The Chair may vote on all matters.

5.5 Agenda. Order of Business.

The Chair shall prepare an agenda for each Committee meeting. Order of business shall be as follows:

1. Call to Order
2. Old Business
3. New Business
4. Approval of Minutes
5. Reports
6. Adjourn

ARTICLE VII - AMENDING OR WAIVING BYLAWS

7.1 Amending Bylaws.

Recommendations for amendment to the Bylaws may be forwarded by the Committee at any time to the Hailey City Council for consideration. Bylaws may only be amended by resolution of the Hailey City Council.

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AGENDA ITEM SUMMARY

DATE: 11/22/10 **DEPARTMENT:** Clerk's office

DEPT. HEAD SIGNATURE: MC

SUBJECT:

Motion to approve Summary of Hailey Ordinance #1075

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Amending section 4.10 of Hailey Municipal Code – Flood Hazard Overlay District adopting new FEMA maps.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____

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

Estimated Hours Spent to Date: _____ Estimated Completion Date: _____

Staff Contact: _____ Phone # _____

Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Recommend approval of the summary for publication on 11/24/10

FOLLOW-UP REMARKS:

*

SUMMARY OF HAILEY ORDINANCE NO. 1075

The following is a summary of the principal provisions of Ordinance No. 1075 of the City of Hailey, Idaho, duly passed and adopted November 8, 2010, by the City Council and Mayor of the City of Hailey:

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING HAILEY'S ZONING ORDINANCE, ORDINANCE NO. 532, BY AMENDING SECTION 4.10, FLOOD HAZARD OVERLAY DISTRICT, TO ADOPT NEW FEMA MAPS AND STUDY BY REFERENCE, CREATE DEFINITIONS, CLARIFY ADMINISTRATIVE PROCEDURES, CREATE NEW NOTICING PROCEDURES FOR FLOOD HAZARD DEVELOPMENT PERMITS THAT ARE REVIEWED BY THE FLOOD HAZARD DEVELOPMENT PERMIT BOARD, SPECIFY WHEN FLOODPROOFING IS ALLOWED, AND CREATE STANDARDS FOR COMMERCIAL STRUCTURES; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A REPEALER CLAUSE; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

Hailey Ordinance No. 1075 amends Hailey Zoning Ordinance, Hailey Ordinance No. 532, as follows:

Section 1 amends Section 4.10 to:

- a) add language to Section 4.10.1, Introduction, to clarify the policy of the city to reduce flood damage;
- b) add language to Section 4.10.2, Purpose, to identify the state law authorizing the adoption of a floodplain map and floodplain management ordinance;
- c) add definitions to Section 4.10.3, Definitions, for Basement, Base Flood, Base Flood Elevation (BFE), Development, Flood Hazard Development Permit Board, Flood Insurance Rate Map (FIRM), Flood Insurance Study (FIS), Floodplain or Special Flood Hazard Area, Floodplain Administrator, Flood Protection Elevation (FPE), Floodway (Regulatory Floodway), Freeboard, Lowest Floor, RV, Structure, Substantial Damage and Substantial Improvement;
- d) amend language in Section 4.10.4, Establishment of Flood Hazard Overlay District, to identify the applicable Flood Insurance Study, Flood Insurance Rate Map and Digital Flood Insurance Rate Map;
- e) renumber Section 4.10.5, Warning and Disclaimer of Liability;
- f) renumber and amend language in Section 4.10.6, Administration, to clarify the duties and responsibilities of the Floodplain Administrator and/or Flood Hazard Development Board when reviewing Flood Hazard Development Permits, all other Federal, State, and local government permits within the Floodplain, Base Flood Elevation and Floodway data, and new construction or substantially improved Structures built within the Floodplain;
- g) renumber and amend language in Section 4.10.7, Floodway and Floodplain Regulations, to clarify permitted uses in the Floodway Sub-District and permitted uses and uses requiring a flood hazard development permit in the Floodplain Sub-District, to prohibit RV's and ATV's stored outside within the Floodplain Sub-District, to provide a 20,000 square foot minimum lot size for buildable lots and no minimum lot size for unbuildable lots, and to limit the continuation of a non-conforming use within the Flood Hazard Overlay District if the use is a nuisance under Chapter 8.04 of the Hailey Municipal Code;

h) renumber and amend language in Section 4.10.8, Flood Hazard Development Permit, to clarify the procedures for a Flood Hazard Development Permit, to clarify the criteria for evaluation for a Flood Hazard Development Permit, to delete the criteria which required no net loss in natural storage area within the Flood Hazard Overlay District, and to clarify the conditions which could be imposed upon a Flood Hazard Development Permit; and

i) renumber and amend language in Section 4.10.9, City Issued Stream Alteration Permit, to increase the time from 30 to 45 days to hear an application a stream alteration permit by the Hailey Planning and Zoning Commission and to clarify the standards for a stream alteration permit.

Section 2 provides a severability clause.

Section 3 provides a repealer clause.

Section 4 establishes the effective date of the Ordinance.

The full text of Ordinance No. 1075 is available at Hailey City Hall at 115 South Main Street, Suite H, Hailey, Idaho 83333 and will be provided to any citizen upon request during regular business hours.

CERTIFICATION OF CITY ATTORNEY

I, the undersigned Attorney at Law, as attorney for the City of Hailey, Idaho, hereby certify that I have read the foregoing summary of Ordinance No. 1075 of the City of Hailey, that I have compared it to the full text of Ordinance No. 1075, and that in my opinion, the above summary is true and complete and provides adequate notice to the public of the contents of said Ordinance.

Dated this 22nd day of November, 2010.


Ned Williamson, Hailey City Attorney

Publish: Idaho Mountain Express, November 24, 2010

Robin Crotty

From: Vicki A. Peterson [vickip@xpressbillpay.com]
Sent: Thursday, November 04, 2010 3:23 PM
To: Robin Crotty
Subject: ODFI EFT agreement
Attachments: Hailey ODFI ORIGINATOR AGREEMENT.pdf

Dear Customer,

Attached is an agreement that we are required to have signed and maintain on file for each customer that we provide electronic banking transactions for. It is all part of compliance with NACHA rules and changes in the banking industry. This new document describes the process for all Electronic Fund Transfers as well as all Check Conversion items processed. It also provides disclosure and information concerning the bank we currently use for processing these transactions on your behalf.

Please sign and return this to us by December 1, 2010 so we can continue to handle this important part of your electronic transaction business.

Thanks,

Vicki Peterson

XPRESS BILL PAY

Tech Support & Implementation Specialist

vickip@xpressbillpay.com

800-768-7295 ext 916

800-768-0535 fax

ODFI ORIGINATOR AGREEMENT

This ODFI Originator Agreement (this "Agreement"), dated as of _____, 20___, is between City of Hailey, a Idaho Municipal Corporation ("Company"), and **Bank of American Fork**, a Utah state chartered bank ("Bank").

RECITALS

A. Company wishes to initiate debit Entries (with such debit Entries to include Accounts Receivable Entries ("ARC Entries")) and credit Entries by means of the Automated Clearing House Network pursuant to the terms of this Agreement, the Third-Party Sender Agreement (identified below) and the rules of the National Automated Clearing House Association (the "Rules"), and Bank is willing to act as an Originating Depository Bank with respect to such Entries.

B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entry" shall have the meaning provided in the Rules and shall also mean the data received from Company from which Bank initiates each Entry.

AGREEMENT

1. Transmittal of Entries By Company.

(a) Through Xpress Solutions L.L.C., a Utah limited liability company d/b/a Xpress Bill Pay, as a third-party sender (the "Third-Party Sender"), Company shall transmit credit and debit Entries to Bank in compliance with the formatting and other requirements set forth in the ODFI / Third-Party Sender Agreement between Third-Party Sender and Bank (the "Third-Party Sender Agreement") (or as otherwise determined or directed by Bank in its sole discretion).

(b) Company agrees that its ability to originate entries under this Agreement is subject to exposure limits in accordance with the Rules and as set forth in the Third-Party Sender Agreement (or as otherwise determined by Bank in its sole discretion).

(c) Nothing in the agreements between Originator and Third-Party Sender shall limit or affect the obligations and responsibilities of Company as an Originator to Bank under this Agreement and the Rules.

2. Security Procedures.

(a) Bank shall comply with the security procedures requirements described in the Third-Party Agreement (together with such other procedures as Bank may provide or determine). Company acknowledges that the sole purpose of such security procedures is an attempt to determine verification of authenticity and not to detect an error in the transmission or content of an Entry. No security or other procedures for the detection of any such error has been agreed upon between Bank and Company, and Bank assumes no such responsibility.

(b) Company, in its agreement with Third-Party Sender, is solely responsible to establish and maintain the procedures to safeguard against unauthorized or erroneous transmissions. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify Bank immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers by Bank prior to receipt of such notification and within a reasonable time period thereafter to respond and to put in place measures to prevent unauthorized transfers.

3. Compliance With Security Procedures.

(a) If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Third-Party Sender, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay Bank the amount of such Entry (or any return with respect thereto) even though the Entry (or request) was not authorized by Company or

Third-Party Sender, provided Bank accepted the Entry in good faith and acted in substantial compliance with the Third-Party Agreement.

(b) If an Entry (or request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Third-Party Sender, Company shall pay Bank the amount of the Entry (or any return with respect thereto), whether or not Bank complied with the Third-Party Agreement with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with such provisions.

4. Recording and Use of Communications. Company and Bank agree that all telephone conversations, emails or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means.

5. Processing, Transmittal And Settlement By Bank.

(a) Except as provided in Section 6 and Section 7, Bank shall (i) process Entries received from Third-Party Sender to conform with the file specifications set forth in the Rules and the Third-Party Sender Agreement, (ii) transmit such Entries as an Originating Depository Bank to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.

(b) Bank shall transmit such Entries to the ACH Operator as set forth in the Third-Party Sender Agreement.

(c) If any of the requirements is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline which is a Business Day and a day on which the ACH Operator is open for business.

6. On-Us Entries. Except as provided in Section 7, in the case of an Entry received for credit or debit to an account maintained with Bank (an "On-Us Entry"), Bank shall credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in Section 5 are met. If either of those requirements is not met, Bank shall use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

7. Rejection of Entries. Bank may reject any Entry which does not comply with the requirements of Section 1, Section 2, or the Third-Party Sender Agreement or which contains an Effective Entry Date more than two (2) days after the Business Day such Entry is received by Bank. Bank may reject an Entry for any reason for which an Entry may be returned under the Rules. Bank may reject any Entry if Third-Party Sender has failed to comply with its obligations under the Third-Party Sender Agreement. Bank may reject any Entry if Third-Party Sender does not adhere to security procedures as described in the Third-Party Sender Agreement or as otherwise determined by Bank.

8. Cancellation or Amendment By Company. Company shall have no right to cancel or amend any Entry submitted by Third-Party Sender to Bank.

9. Notice of Returned Entries; Notice of Change. Bank shall notify Third-Party Sender by phone, electronic transmission, including email, or by other writing of the receipt of a returned Entry from the ACH Operator no later than one (1) Business Day after the Business Day of such receipt. Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry.

Bank shall provide Third-Party Sender all information, as required by the Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Bank relating to Entries transmitted by Company.

10. Unconditional Payment by Company for Entries; Payment by ODFI for Entries.

(a) Company shall unconditionally and promptly pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Agreement at such time on the date of transmittal by Bank of such credit Entry as Bank, in its discretion, may determine.

(b) Company shall unconditionally and promptly pay Bank the amount of, and shall otherwise indemnify and hold Bank harmless with respect to, each debit Entry returned (for whatever reason, except due to Bank's gross negligence or willful misconduct), including without limitation an ARC Entry return, by an RDFI that was transmitted by Bank pursuant to this Agreement.

11. The Account. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the settlement account of the Third-Party Sender identified in the Third-Party Sender Agreement (the "Account"). Company agrees that Bank may debit any account maintained by Company with Bank or that Bank may set off against any amount it owes to Company, in order to obtain payment of Company's obligations under this Agreement. Upon request of Bank, Company agrees to promptly provide to Bank such information pertaining to Company's financial condition as Bank may reasonably request.

12. Account Reconciliation. Entries transmitted by Bank or credited to a Receiver's account maintained with Bank will be reflected on Third-Party Sender's periodic statement issued by Bank with respect to the Account pursuant to the agreement between Bank and Company. Third-Party Sender has the responsibility of determining the accuracy of all such statements pursuant to the terms of the Third-Party Sender Agreement and the Account agreement. Bank has no obligation to provide any such information to Company.

13. Company Representations And Agreements; Indemnity.

(a) With respect to each and every Entry transmitted by Company, Company represents and warrants to Bank and agrees that (a) each person shown as the Receiver on an Entry received by Bank from Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein, (c) Company shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC; laws, regulations, and orders administered by FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, and (d) Company shall be bound by and comply with the provision of the Rules (among other provisions of the Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company specifically acknowledges that it has received notice of the rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry.

(b) With respect to each and every ARC Entry, Company represents and warrants that the Company has provided the requisite notice to the Receiver prior to the receipt of Receiver's check stating that the check will be used as the basis for the origination of an ARC Entry, stating substantially the following:

When you provide a check as payment, you authorize us to use the information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your check as a check transaction.

(c) Such notice also gives the Receiver the right to give a notice to Company opting out of the use of the check to generate an ARC Entry.

(d) With respect to each and every Entry transmitted as an ARC, Company represents the amount of the Entry, the routing number, the account number, and the check serial

number are in accordance with source check. In addition, Company represents to Bank that with respect to each ARC Entry:

- (i) the Entry was not transmitted to an account of a Receiver who did not receive prior notice of the check conversion or who opted out of check conversion;
- (ii) the source check was not presented for payment;
- (iii) the check used for the debit Entry is in proper form;
- (iv) the check has the necessary MICR line for an ARC Entry;
- (v) the check is for an amount no greater than \$25,000;
- (vi) the check is not a third-party check or a draft;
- (vii) the check has not been remotely created;
- (viii) the check has not been provided by a credit card or home equity line lender for purposes of accessing credit;
- (ix) the check is not drawn on an investment company;
- (x) the check is not an obligation of a financial institution (e.g. a travelers check, cashier's check, money order, etc.); and
- (xi) the check is not payable in a currency other than United States currency.

(e) Company shall indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any breach of any of the foregoing warranties, representations, and agreements.

14. Bank Responsibilities; Liability; Limitations on Liability; Indemnity.

(a) In the performance of the services required by this Agreement, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Agreement and by Third-Party Sender pursuant to this Third-Party Sender Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall be responsible only for performing the services expressly provided for in the Third-Party Sender Agreement, and shall be liable only for its gross negligence or willful misconduct in performing those services. Bank shall not be responsible for Company's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Company) or those of any other person, including, without limitation, Third-Party Sender, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Company agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and costs) resulting from or arising out of any claim of any person that the Bank is responsible for any act or omission of Company or any other person described in this Section 14(a).

(b) To the extent that Company incurs losses caused solely by Bank's willful misconduct or grossly negligent conduct in performing the services provided herein, Bank shall be liable only for Company's actual damages; Bank shall not be liable for any consequential, special, incidental, punitive or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by the Bank and regardless of the legal or equitable theory of liability which Company may assert, including, without limitation, loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions pursuant to this Agreement.

(c) Without limiting the generality of the foregoing provisions, Bank shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of

transmission or communication facilities, equipment failure, civil strife, war, emergency conditions or other circumstances beyond Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

(d) Subject to the foregoing limitations, Bank's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds Rate at the Federal Reserve Bank of San Francisco for the period involved. At Bank's option, payment of such interest may be made by crediting the Account.

(e) Bank does not warrant to Company that the Bank's ACH services and related system (whether mechanical, computerized or otherwise) will be free from error or that it will meet the specific requirements of Company. Company shall assume complete responsibility for any Company decisions or actions taken based on information obtained as part of the Banking ACH services or from use of the related system. In the event of a breach of warranty, Bank's sole obligation and liability shall be to take commercially reasonable efforts to protect Company against loss and to provide competent services as expected from a financial institution consistent with industry standards to correct any errors identified in the System and to re-perform any services which fail in a material respect to meet the limited warranties provided herein. Notwithstanding the foregoing, Bank makes no warranties, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose.

15. Inconsistency of Name And Account Number. Company acknowledges and agrees that if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI may be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number supplied by Third-Party Sender, even if it identifies a person different from the named Receiver, and that Company's obligation to pay the amount of the Entry to Bank (or any return with respect thereto) is not excused in such circumstances.

16. Amendments. From time to time Bank may amend any of the terms and conditions contained in this Agreement and the Third-Party Sender Agreement. Such amendments shall become effective upon thirty (30) days after receipt of notice by Company or such later date as may be stated in Bank's notice to Company.

17. Notices, Instructions, Etc.

(a) Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter.

(b) Bank shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine, and any such communication shall be deemed to have been signed by such person.

(c) Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States registered or certified mail, postage prepaid, or by express carrier, and, if to Bank, addressed to:

Bank of American Fork
P.O. Box 307
American Fork, Utah 84003
Attn: Janet Lopez

and, if to Company, addressed to:

Attn: _____

unless another address is substituted by notice delivered or sent as provided herein. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

18. Data Retention.

(a) Company shall retain all information about its digitizing of checks and related items and source documents for thirty (30) days following the date of their transmittal to Third-Party Sender, and shall provide such data to Bank upon its request. Without limiting the generality of the foregoing provision, Company specifically agrees to be bound by and comply with all applicable provisions of the Rules regarding the retention of documents or any record, including, without limitation, Company's responsibilities to retain all items, source documents, and records of authorization in accordance with the Rules.

(b) Company will retain each check used to originate debit Entries for a reasonable period of time, but in no event fewer than ninety (90) days after such check has been digitized and transmitted to Third-Party and no more than one hundred eighty (180) days after such date. Company will use commercially reasonable methods to destroy such checks including without limitation prior storage in a locked, secure location and cross-shredding.

19. Tapes and Records. All magnetic tapes, Entries, security procedures and related records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Company's request. Any expenses incurred by Bank in making such information available to Company shall be paid by Company.

20. Evidence of Authorization. Company shall obtain all consents and customer authorizations required under the Rules and Section 13 of this Agreement and shall retain such consents and authorizations for two (2) years after they expire.

21. Cooperation in Loss Recovery Efforts. In the event of any damages for which Bank or Company may be liable to each other or to a third party pursuant to the services provided under this Agreement, Bank and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

22. Termination. Bank reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Bank's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Bank prior to termination, or any other obligations that survive termination of this Agreement.

23. Entire Agreement. This Agreement, together with the Third-Party Sender Agreement, is the complete and exclusive statement of the agreement between Bank and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between Bank and Company with respect to such subject matter. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Bank and Company will constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between the Bank and Company, regardless of whatever practices and procedures Bank and Company may use.

24. Non-Assignment. Company may not assign this Agreement or any of the rights or duties hereunder to any person without Bank's prior written consent.

25. Waiver. Bank may waive enforcement of any provision of this Agreement. Any such waiver shall not affect Bank's rights with respect to any other transaction or modify the terms of this Agreement.

26. Binding Agreement; Benefit. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Bank or Company hereunder.

27. Headings. Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

28. Severability. In the event that any provision of this Agreement shall be determined to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

29. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. Company consents to the nonexclusive jurisdiction of the state and federal courts of the State of Utah to consider any matter or lawsuit with respect to the enforcement of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Bank of American Fork

By _____
Name _____
Title _____

By _____
Name _____
Title _____