AGENDA ITEM SUMMARY

DATE: 06/04/2012 DEPARTMENT: Public Works DEPT. HEAD SIGNATURE: 

SUBJECT: Ratification of Interpretive Center Change Orders

AUTHORITY: □ ID Code □ IAR □ City Ordinance/Code (IFAPPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Two change orders were administratively approved due to the small cost increase and schedule impacts associated with both changes. The changes are as follows: 1) $335.23 cost increase to provide two extra conduits for future security and camera needs within the multi-use arena and 2) $1,843.38 to furnish extra backfill material for under the floor slab.

The reasons for the change orders are as follows: 1) the security needs and equipment had not been determined prior to the bid for the project being created; therefore, provisions were not included in the Interpretive Center bid documents and 2) it was determined after the contract was approved and work begun that a greater amount of fill was needed than originally anticipated. The amount of fill available on-site was never specified in the bid documents. This item was discussed with the mayor prior to giving consent for the change order.

These change orders have been accounted for in Pay Application No. 1 to Sawtooth Construction, which is included in this claim for expenses listed at the end of the Consent Agenda.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IFAPPLICABLE)

☐ City Administrator ☐ Library ☐ Benefits Committee
☐ City Attorney ☐ Mayor ☐ Streets
☐ City Clerk ☐ Planning ☐ Treasurer
☐ Building ☐ Public Works, Parks
☐ Engineer ☐ P & Z Commission
☐ Fire Dept.

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Ratify the change orders and allow payment to Sawtooth Construction for the amount specified in the claim for expenses.

ACTION OF THE CITY COUNCIL:

Date:

City Clerk

FOLLOW-UP:

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

*Additional/Exceptional Originals to: Copies (AIS only)
Sawtooth Construction
PO Box 41
10th St. Center Suite B12
Ketchum ID 83340
208-726-9070
License: RCE-442

Change Order
Order #: 002
Order Date: 5/21/12

To: Micahel Bulls
Ruscitto/Latham/Blanton

Project: Interpretive Center
Hailey Rodeo Grounds

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Furnish Extra Conduit for Future Security and Camera Locations – Per Tom Hellen

Ordered By: Tom Hellen
Received By: Greg Strong

Buffalo Electric Proposal CO #1 $335.23
Sawtooth Construction 5% markup per contract $16.76

Description of Work
Install 2" Spare conduits at NE corner of the building

Total Requested amount of Change: $351.99

Owner: __________________________ Date: __________________________

Contractor: __________________________ Date: 5/21/2012
Price to include materials and labor to install 2 ea. 2" PVC conduits at North East corner of the building.

<table>
<thead>
<tr>
<th>Quantity</th>
<th>Item</th>
<th>Unit Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>100</td>
<td>2&quot; PVC schedule 40</td>
<td>$0.78</td>
<td>$78.00</td>
</tr>
<tr>
<td>2</td>
<td>2&quot; PVC 90</td>
<td>$5.02</td>
<td>$10.04</td>
</tr>
<tr>
<td>2</td>
<td>2&quot; PVC sweeps</td>
<td>$13.56</td>
<td>$27.12</td>
</tr>
<tr>
<td>1</td>
<td>Glue</td>
<td>$7.15</td>
<td>$7.15</td>
</tr>
<tr>
<td>2</td>
<td>PVC coupling</td>
<td>$0.87</td>
<td>$1.74</td>
</tr>
</tbody>
</table>

Total Material: $124.05
10% profit and O/H: $12.41
Total Material: $136.46

2 hours Journeyman Labor cost: $109.20
10% Profit: $10.92
Total Journeyman labor: $120.12

2 hours Apprentice Labor cost: $71.50
10% Profit: $7.15
Total Apprentice labor: $78.65

Total: $335.23
Change Order
Order #: 001-amended
Order Date: 5/11/12

Sawtooth Construction
PO Box 41
10th St. Center Suite B12
Ketchum ID 83340
208-726-9070
License: RCE-442

To: Micahel Bulls
Ruscitto/Latham/Blanton

Project: Interpretive Center
Hailey Rodeo Grounds

The contractor agrees to perform and the owner agrees to pay for the following changes to this contract.

Furnish Extra material for Under Slab.

Ordered By:

Received By:

Burks Excavation change Order: 2417 attached  $1,755.60
Sawtooth Construction 5% markup per contract  $87.78

Description of Work

Total Requested amount of Change: $1,843.38

Owner: __________________________ Date: __________

Contractor: ______________________ Date: 5/17/2012
<table>
<thead>
<tr>
<th>Description</th>
<th>Qty</th>
<th>Rate</th>
<th>Unit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Furnish 1&quot; crushed gravel over 3/4&quot; minus road mix under proposed slab</td>
<td>114</td>
<td>7.00</td>
<td>cubic yard</td>
<td>938.80</td>
</tr>
<tr>
<td>1&quot; Fractured cost per cubic yard</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>trucking cost per yard, delivered to job</td>
<td>124</td>
<td>5.00</td>
<td>cubic yard</td>
<td>670.20</td>
</tr>
<tr>
<td>truck driver cost per yard</td>
<td>124</td>
<td>2.00</td>
<td>cubic yard</td>
<td>268.00</td>
</tr>
<tr>
<td>overhead and profit: 10%</td>
<td></td>
<td>1.40</td>
<td>cubic yard</td>
<td>487.60</td>
</tr>
</tbody>
</table>

Quantity is an estimate of 1" crushed rock that will be needed to get to bottom of sand elevation. In the prebid meeting, it was mentioned that there is approximately 16" of gravel that could be scraped off and reused under the slab. As we scraped the road mix, there was only 4"-6" of road mix, approximately 32 cubic yards.

\[
71' \times 23' = 1,633 \text{ ft}^2 \times 2' = 3,638 \text{ ft}^3
\]

\[
131 \text{ yd}^3 - 36 \text{ yd}^3 \text{ (stockpile)} = 95 \text{ yd}^3
\]

\[
95 \text{ yd}^3 \times 20\% \text{ swell} = 114 \text{ yd}^3 \text{ required}
\]

Thank you for your business.

Total: $1,755.60
AGENDA ITEM SUMMARY

DATE: 05/21/2012  DEPARTMENT: Finance  DEPT. HEAD SIGNATURE: MHC

SUBJECT:
Motion to authorize Mayor to sign "Property Damage Release" from Acuity Insurance Company for repair to damaged fire hydrant by their insured.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Acuity Insurance Company's insured damaged and repaired a fire hydrant. See below excerpt from the Hailey Fire Department regarding the hydrant:

From: Brian Ernst
Sent: Wednesday, May 09, 2012 1:01 PM
To: Heather Dawson
Cc: Mike Chapman
Subject: SV auto club hydrant

Hi Heather,

As requested, a follow up was conducted on the fire hydrant located at the NE corner of the Sun Valley Auto Club that was damaged by vehicle impact a few weeks prior. I verified with the water department that the hydrant is both repaired and functional, as well as did a site visit and flowed the hydrant. As of now, the hydrant appears to be 100% functional and all equipment is in its original place. For the insurance purposes, this should serve as "final check-off" by the fire department. If you need any further information please don’t hesitate to contact me. Thanks.

Eng. Brian Ernst
Fire Inspector
Hailey Fire Department

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

☒ City Administrator  ☐ Library  ☐ Benefits Committee
☐ City Attorney  ☐ Mayor  ☐ Streets
☒ City Clerk  ☐ Planning  ☐ Treasurer
☒ Building  ☐ Police  ☐
☒ Engineer  ☐ Public Works, Parks  ☐
☒ Fire Dept.  ☐ P & Z Commission  ☐

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Motion to authorize Mayor to sign release to Acuity Insurance Company for repair to damaged fire hydrant by their insured.

ACTION OF THE CITY COUNCIL:
Date: ____________________

City Clerk ____________________
PROPERTY DAMAGE RELEASE

Claim Number: MW5644  
Claim Adjuster: Cyndy Macco

IN CONSIDERATION of the sum of One Hundred Forty-One and 72/00 ($141.72) Dollars, receipt and sufficiency of which is hereby acknowledged, I/we release, acquit and forever discharge Mitch & Toni Marcroft and Lukus Sisiam and ACUITY, A Mutual Insurance Company, Sheboygan, Wisconsin, their heirs, representatives, agents, employees, successors and assigns, and all other persons, firms or corporations who are or might be liable, of and from all claims, demands, actions, damages, costs, loss of use and/or value, of whatever kind or nature, which may now or hereafter exist, arising out of, or in consequence of DAMAGE OR DESTRUCTION TO PROPERTY, personal or real, specifically described as fire hydrant and arising from an accident occurring on or about 4/23/2012.

The undersigned, as further consideration for this compromise and settlement, states, represents, warrants and agrees:

(1) That this settlement is a compromise of a doubtful and disputed claim; that the payment is not to be construed as an admission of liability; and, that liability is expressly denied by the party or parties released.

(2) That the acceptance of the above-mentioned sum shall not prejudice, foreclose or bar any claim that I/we may have for personal injuries, medical expenses, compensation or damages other than to my/our property not specifically released herein, which claims and causes of action are specifically reserved.

(3) The undersigned further warrants and represents that there are no known persons, firms, corporations, insurance companies or other third-parties who have rights against the parties released herein based upon subrogation, derivation or assignment originating from the claims of the undersigned arising out of the accident described above or any other basis. In the event that any person, firm, corporation or insurance company does indeed have rights based upon subrogation, derivation or assignment, or any other basis against the parties released herein for claims arising out of the accident described above, the undersigned agrees to defend and hold harmless the parties released herein from any such claims.

(4) This release contains the entire agreement between the parties hereto. The terms of this release are contractual and not a mere recital. The undersigned has/have carefully read and understood the contents of this release.

I/WE FURTHER STATE THAT I/WE HAVE CAREFULLY READ THE FOREGOING RELEASE AND KNOW THE CONTENTS THEREOF, AND I/WE SIGN THE SAME AS MY/OUR OWN FREE ACT.

Witness my/our hand(s) and seal(s) this __________ day of ______________, __________. 
at ________________________

WITNESSED BY: ________________________________ ________________________________

CAUTION! READ BEFORE SIGNING

Representative for the City of Hailey (SEAL)

(SEAL)

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

Also Applicable in Colorado: Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

K-323(9-10)
AGENDA ITEM SUMMARY

DATE: 05/15/2012     DEPARTMENT: Public Works     DEPT. HEAD SIGNATURE: 

SUBJECT: Northridge Subdivision Right of Way Water Rights Transfer to city.

AUTHORITY: ☐ ID Code ☐ IAR ☐ City Ordinance/Code

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Overview
The application presented here is to transfer the water rights associated with the Right of Way dedicated to the city as part of the Northridge subdivision. The city will own the water rights once the transfer is complete. Four individual transfers are applied for at the fee of $100.00 per transfer.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle#
Budget Line Item # YTD Line Item Balance $
Estimated Hours Spent to Date: Estimated Completion Date: ____________________________
Staff Contact: Jim Zarubica Phone # 788-9830 ext. 17
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD: Motion to approve application, authorize $400 fee payment, and authorize mayor to sign.

ADMINISTRATIVE COMMENTS/APPROVAL:

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

ACTION OF THE CITY COUNCIL:
Date

City Clerk

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

Draft 12-30-03
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check “Yes” in the “Split?” column.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>37-21811</td>
<td>Yes ☑</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37-21813</td>
<td>Yes ☑</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37-21815</td>
<td>Yes ☑</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37-21817</td>
<td>Yes ☑</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Previous Owner’s Name: EMB-Hailey LP
   Name of current water right holder/claimant

3. New Owner(s)/Claimant(s):
   City of Hailey
   Name of each new owner as listed on the conveyance document
   
   New owner continued
   Name connector □ and □ or □ and/or
   115 S. Main St. #1
   Mailing address
   Hailey
   ID 83333
   City
   (208) 788-4221
   Telephone
   Email

4. If the water rights and/or adjudication claims were split, how did the division occur?
   □ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
   □ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: ____________________________

6. This form must be signed and submitted with the following REQUIRED items:
   - A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
   - Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
   - Filing fee (see instructions for further explanation):
     ○ $25 per undivided water right.
     ○ $100 per split water right.
     ○ No fee is required for pending adjudication claims.

7. Signature:
   Signature of new owner/claimant
   □ Mayor, City of Hailey
   Title, if applicable
   Date
   Signature:
   Signature of new owner/claimant
   □ Mayor, City of Hailey
   Title, if applicable
   Date

For IDWR Office Use Only:
   Receipted by ____________________________ Date ________________ Receipt No. ________________ Receipt Amt. ________________
   Approved by ____________________________ Processed by ____________________________ Date ________________

Form 42-248/42-1405(6) Rev. 07/10

- 10 -
AGENDA ITEM SUMMARY

DATE: 6/4/12   DEPARTMENT: PW - Capital   DEPT. HEAD SIGNATURE: 

SUBJECT: Work Order with Idaho Power for service to traffic signal at Woodside & Hwy 75

AUTHORITY: □ ID Code _______   □ IAR _______   □ City Ordinance/Code _______
(IFAPPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:
Idaho Power has submitted a Work Order for the installation of electric service and necessary facilities for the traffic signal and lighting at Woodside Blvd and Hwy 75. The cost for this service extension is $7,707. This is a part of the Woodside Blvd construction project.

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

<table>
<thead>
<tr>
<th>City Administrator</th>
<th>Library</th>
<th>Benefits Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Attorney</td>
<td>Mayor</td>
<td>Streets</td>
</tr>
<tr>
<td>City Clerk</td>
<td>Planning</td>
<td>Treasurer</td>
</tr>
<tr>
<td>Building</td>
<td>Police</td>
<td></td>
</tr>
<tr>
<td>Engineer</td>
<td>Public Works, Parks</td>
<td></td>
</tr>
<tr>
<td>Fire Dept.</td>
<td>P &amp; Z Commission</td>
<td></td>
</tr>
</tbody>
</table>

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:
Approve the Public Works Director’s signature and authorize the payment of $7,707 to Idaho Power.

ADMINISTRATIVE COMMENTS/APPROVAL:

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

ACTION OF THE CITY COUNCIL:
Date _______________

City Clerk _______________

FOLLOW-UP:
*Ord./Res./Agrmt./Order Originals: Record Copies (all info.): Instrument #
*Additional/Exceptional Originals to: ___________________________ Copies (AIS only)
CITY OF HAILEY
RESOLUTION NO. 2012-34

RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF CONTRACT FOR SERVICES WITH IDAHO
POWER, FOR INSTALLATION OF FACILITIES NEEDED TO SERVE NEW
TRAFFIC SIGNAL AND CUSTOMER OWNED STREET LIGHTING

WHEREAS, the City of Hailey desires to enter into an agreement with Idaho Power
under which Idaho Power will perform and be responsible for Installation Of Facilities Needed
To Serve New Traffic Signal And Customer Owned Street Lighting For $7,707.00 for the City of
Hailey.

WHEREAS, the City of Hailey and Idaho Power have agreed to the terms and conditions
of the Agreement for Professional Services, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF HAILEY, IDAHO, that the City of Hailey approves the Service Request Work Order
between the City of Hailey and Idaho Power and that the Mayor is authorized to execute the
attached Agreement,

Passed this 4th day of JUNE, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk
In Account With

City of Hailey
Attn: Tom Heilen
115 Main Street
Hailey, Idaho 83333

Work Order # 27366457 Date May 17, 2012

In accordance with your request: Install facilities needed to serve new traffic control signal and customer owned street lighting.

Line Location: Woodside Blvd and Highway 75, Hailey, ID

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Line Installation Costs (Line 1)</td>
<td>$5,869.00</td>
</tr>
<tr>
<td>Line Installation Credits (Betterment, Salvage, Customer Trench)(Lines 2-4)</td>
<td></td>
</tr>
<tr>
<td>Terminal Facilities (Line 6)</td>
<td>$1,838.00</td>
</tr>
<tr>
<td>Customer Allowance (Line 7)</td>
<td></td>
</tr>
<tr>
<td>Unusual Conditions (Line 9)</td>
<td></td>
</tr>
<tr>
<td>Other Charges (Eng Fees, Right of Way, Misc Charges) (Lines 14-23)</td>
<td></td>
</tr>
</tbody>
</table>

Amount to be paid and received prior to job being scheduled.

$ 7,707.00

☐ Please remit payment.
☒ Please return signed and dated Service Request and Customer Cost document (attached).
☒ Please return signed and dated Work Order Map.
☐ Other

Comments:

Work order will not be released for scheduling for construction until payment and/or requested documents are signed and returned.

PLEASE RETURN SIGNED DOCUMENTS TO:

IDAHO POWER COMPANY
Attn: Cyndi Bradshaw
PO Box 3909 OR - 11831 Highway 75
Hailey, ID 83333

If you have any questions, please telephone:
Cyndi @ (208) 788-8002
Service Request Number: 00324986

CITY OF HAILEY-WOODSIDE & HWY 75/HAI TRAFFIC SIGNAL & ST LIGHTS

Work Order Number: 27366457
Request Type: CS
Rate Sch.: 47 & 41M
Reply By:

Feeder: HALY11B
Service Location: WOODSIDE & HWY 75 HAILEY, ID 83333
Required in Service Date: 5/15/2012
Planning Center/Team: HAILEY

Contact Detail:

252R CITY OF HAILEY
115 S Main St., HAILEY ID 83333 788-9830 X14

CUST TOM HELLEN 309-1270

IPCO CYNDI BRADSHAW DISTRIBUTION DESIGNER, 208-788-8002

Attribute Information
RES/COM

Service Voltage 120/240
Number of Phases SINGLE
KW Motor Load:
Largest Motor
1 Phase KW Demand
3 Phase KW Demand
Connected KW Load
Commercial Deposit Amount

No. Of Meters
Meter Location
Ct Loc
Primary OH/UG
Service OH/UG
Svc Owner
Panel Amp Size

OH
UG
IPCO
200AMPS

Notes
INSTALL POLE IN LINE, TRANSFORMER AND 2" SERVICE RISER WHERE STAKED, IN-LINE
AND ON NORTH OF WOODSIDE ROAD AT HIGHWAY 75 FOR NEW TRAFFICE SIGNAL AND
STREET LIGHT LUMINAIRES.
Permanent underground service will be bored from pole to dual meter
pedestal.

I understand that the information provided above is accurate to the best of my knowledge. Changes to load; voltage; location; etc.
may result in additional engineering charges.

Client Signature
Date
Idaho Power Representative Signature
Date
### CUSTOMER COST QUOTE

**IDAH0**

<table>
<thead>
<tr>
<th>Customer or Project Name:</th>
<th>Design Number:</th>
<th>Work Order #:</th>
</tr>
</thead>
<tbody>
<tr>
<td>CITY OF HAILEY-WOODSIDE &amp; HWY 75/HAI TRAFFIC SIGN</td>
<td>0000092660</td>
<td>27366457</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line Installation Cost</th>
<th>Prepaid Fees</th>
<th>Debit</th>
<th>Credit</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Line Installation/Upgrade Costs</td>
<td></td>
<td>5,869</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Company Betterment / Other Credits</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Salvage Taxable - Credit</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Customer Provided Trench</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. <strong>Net Line Installation Cost</strong></td>
<td></td>
<td></td>
<td></td>
<td>5,869</td>
</tr>
<tr>
<td><strong>Terminal Facilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Terminal Facilities</td>
<td></td>
<td>1,838</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Customer Allowance</td>
<td></td>
<td></td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>8. <strong>Net Terminal Facilities</strong></td>
<td></td>
<td></td>
<td></td>
<td>1,838</td>
</tr>
<tr>
<td>9. Unusual Conditions</td>
<td></td>
<td>0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Bank Letter of Credit (Only for Unusual Conditions over $10,000)</td>
<td></td>
<td></td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>11. Net Construction Cost</td>
<td></td>
<td></td>
<td></td>
<td>7,707</td>
</tr>
<tr>
<td>12. Net Vested OR Refundable Construction Cost (Limited to 5 years or 4 additional applicants)</td>
<td></td>
<td></td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>13. Construction Cost Not Available for Vesting or Refund</td>
<td></td>
<td></td>
<td></td>
<td>7,707</td>
</tr>
</tbody>
</table>

**Other Charges**

| 14. Vested Interest Work Order # | | | |
| 15. Billable Right of Way Permits | | | |
| 16. Prepaid Right of Way Permits | | | |
| 17. Billable Engineering Charges | | | |
| 18. Prepaid Engineering Fees | | | |
| 19. Underground Service Attachment Charge | | | |
| 20. Relocation or removal with new capacity | | | |
| 21. Relocation or removal with NO new capacity | | | |
| 22. Salvage Credit on Relocation or Removal | | | |
| 23. Miscellaneous Charges/Adjustments | | | |
| 24. **Net Other Charges** | | | | 0 |
| 25. Total Work Order Charges | | | | 7,707 |
| 26. Idaho Power Co. Contribution & Other Credits | | | | 0 |
| 27. Total Customer Payment Due (Line 11 + Line 24) | | | | 7,707 |

**Notes:**

*Notice:* This written quotation shall be binding on the Company for a period of sixty days (60) from the date below indicated, subject to changes in information provided by the Customer or changes in the Company's ability to obtain satisfactory labor, materials, or to comply with governmental regulations, including but not limited to the rules, regulations, and tariffs of the Idaho Public Utilities Commission. The Customer must make payment of the quote amount not less than thirty (30) days prior to the start of construction. The Company does not represent that construction will commence within 30 days of receipt of payment. The start of construction will be subject to the Company's ability to obtain the necessary labor, materials, and equipment.

<table>
<thead>
<tr>
<th>Customer Signature</th>
<th>Date</th>
<th><strong>x N.A.</strong> (Customer Initials) Charges for installation of underground electrical service are not included in this Cost Quote and will be billed to the customer after work has completed</th>
</tr>
</thead>
<tbody>
<tr>
<td>x N.A. (Customer Initials)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**IPCo Representative:** Lynda Bradshaw  
**Quotation Date:** 5/18/12
INSTALL POLE IN LINE, 25KVA 7.2KV 120/240 TRANSFORMER AND 2" SERVICE RISER.
EUREKA TO BORE ONE 2" SERVICE CONDUIT FROM POLE LOCATION TO METER LOCATION.
AGENDA ITEM SUMMARY

DATE: 06/04/2012       DEPARTMENT: Public Works       DEPT. HEAD SIGNATURE: [Signature]

SUBJECT: Engineering services agreement for Irrigation river intake design and water right transfer for Lions and Hop Porter Park

AUTHORITY: □ ID Code ___________  □ IAR ___________  □ City Ordinance/Code
(If Applicable)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Overview
The proposed scope of work from SPF Water Engineering is presented here for the transfer of City water rights from the Hiawatha Canal to the Big Wood River and for the design of a diversion to allow irrigation of Hop Porter and Lions Parks with surface water.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle#

Budget Line Item # ___________  YTD Line Item Balance $ ___________
Estimated Hours Spent to Date: ___________  Estimated Completion Date: ___________
Staff Contact: Jim Zarubica ___________  Phone #: 788-9830 ext. 17
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (If Applicable)

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD: Approve contract and sign.

ADMINISTRATIVE COMMENTS/APPROVAL:

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

ACTION OF THE CITY COUNCIL:
Date ___________

City Clerk ___________

FOLLOW-UP:
*Ord./Res./Agmt./Order Originals: Record
Copies (all info.):
Instrument # ____________________
*Additional/Exceptional Originals to: ____________________
Copies (AIS only) ____________________
Draft 12-30-03
CITY OF HAILEY
RESOLUTION NO. 2012-35

RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF CONTRACT FOR SERVICES WITH SPF
WATER ENGINEERING, FOR ENGINEERING SERVICES FOR IRRIGATION RIVER
INTAKE DESIGN AND WATER RIGHT TRANSFER FOR LIONS AND HOP PORTER
PARKS.

WHEREAS, the City of Hailey desires to enter into an agreement with SPF Water
Engineering under which SPF Water Engineering will perform and be responsible for
Engineering Services For Irrigation River Intake Design And Water Right Transfer For Lions
And Hop Porter Parks - Not To Exceed $15,000 for the City of Hailey.

WHEREAS, the City of Hailey and SPF Water Engineering have agreed to the terms and
conditions of the Agreement for Professional Services, a copy of which is attached hereto.

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

Passed this 4th day of JUNE, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk
May 18, 2012

Tom Hellen, P.E., Public Works Director
City of Hailey
115 Main Street South, Suite H
Hailey, ID 83333

*Jim Zarubica – via email*

Subject: River Intake Site Selection and Design – Lions Park

Dear Tom:

As a follow up to our meeting with Jim Zarubica on May 2, 2012, this letter describes a proposed scope of work for developing a new irrigation water supply for Lions Park and Hop Porter Park; both parks are owned and operated by the City of Hailey.

We understand the following:

- The parks are currently irrigated using potable water delivered through the City’s municipal water supply system.
- A water supply from the Big Wood River is desired for approximately 6 acres of turf and landscape irrigation (roughly 3 acres in each park).
- The City currently owns water rights that are delivered in the Hiawatha Canal. The City has been in contact with the canal company to discuss the park projects, and will continue to work with Hiawatha Canal to facilitate transfer of the City’s water rights to a new point of diversion in Lions Park.
- A shallow well with a direct hydraulic connection to the Big Wood River is the preferred option for this diversion facility.
- Peak hour irrigation demand for the parks is estimated to be approximately 90 gallons per minute. This estimated demand will be confirmed by City staff.

**SCOPE OF WORK**

SPF is available to provide services related to site selection, permitting, design, and construction oversight for the new Big Wood River diversion facilities:

**Task 1. Site Selection** SPF conducted a field visit on May 2, 2012 and met with City staff to select a possible diversion location near the Big Wood River in Lions Park. SPF will provide a memo to the City confirming the location of the selected site and the area of the parks to be irrigated.
Task 2. **Hydrogeologic Analysis.** The anticipated diversion structure is a shallow well constructed adjacent to, and in direct hydraulic connection with, the Big Wood River. This approach is expected to greatly simplify and reduce costs for permitting, design, operation and maintenance of the diversion structure. SPF will review well construction information in the vicinity of the proposed diversion location and prepare a hydrogeologic analysis with a depletion rate determination. IDWR requires that the shallow well diversion be in direct hydraulic connection with the Big Wood River with a 50% (or greater) in 24-hours depletion rate. Provided this analysis demonstrates a sufficient hydraulic connection, SPF will proceed with the remaining tasks. If the hydraulic connection is insufficient, other options will be discussed with the City and this scope of work may be amended at that time.

Task 3. **Permitting.** SPF will prepare a transfer application to be filed with the Idaho Department of Water Resources (IDWR) that will request authorization to change the point of diversion for a portion of the City’s water rights from the head of the Hiawatha Canal to the location of the new diversion facility. SPF will also work with county, state and federal agencies to obtain any additional permits required for installing the chosen facility at the selected site. In order to lessen the likelihood of protests, we recommend that the City coordinate with Hiawatha Canal managers on the proposed changes prior to submitting the transfer application, and if possible, secure a statement from Hiawatha Canal agreeing to the transfer. IDWR will likely seek input from Hiawatha prior to advertising the transfer application.

Task 4. **Well Design.** SPF will prepare technical specifications and bid schedule for well drilling. The plans will likely contemplate a nominal 50-foot deep well, constructed with 8-inch well casing and well screen. We currently anticipate that the well will be drilled using the cable-tool or air-rotary method. The 8-inch well casing will be adequate to fit submersible pumps capable of producing up to approximately 400 gpm. We assume that the City will provide general conditions and bidding instructions.

The City will solicit bids for the work. SPF does not anticipate attending a pre-bid meeting, but will be available to answer questions by telephone or email. SPF will review the bids with the City and make a recommendation for bid award.

Task 5. **Well Construction Administration.** Following selection of a drilling contractor, SPF will prepare and submit an *Application for Drilling Permit* to the Idaho Department of Water Resources. We anticipate submitting this application immediately after the protest period has expired for the pending water right transfer application. The *Application for Drilling Permit* will include a request for a waiver of the 38-foot surface seal requirement. A surface seal of approximately 20 feet will likely be requested to allow placement of well screen and filter pack within the shallow water-bearing zone that is in hydraulic connection with the River.

Once the City has entered into an agreement with the successful contractor, SPF will work with the selected contractor during the well construction project. We anticipate that this work will consist of telephone consultation with the driller, and will include a recommendation for final well design (casing and screen depths, filter pack selection, screen slot size selection, etc.). One site visit is anticipated during drilling or test pumping.
Well construction will be documented in a brief well completion report. The report will include an as-built diagram of the well, well driller’s report, test pumping data, and permits. A recommendation will be provided for pump sizing and setting depth.

**Task 6. Pump System Design.** SPF will prepare technical specifications, plans, and bid schedule for the pump system. We currently anticipate that the pump will be a 10-hp, 6-inch diameter submersible pump sized to meet a 100-gpm at 85 psi peak demand for the sprinkler irrigation system. The pump will be controlled using a UL-listed outdoor rated variable speed control panel manufactured by Precision Pumping Systems (or equal). In the event that the City anticipates low flow demands of 20 gpm or less, a small jockey pump may also be required.

SPF plans and specification will include the pump, motor, motor controls, discharge piping, and valves. We currently assume that the motor controls will be located outdoors. The well will be located outdoors, with a pitless discharge. Valves, flow meter, or other appurtenances can be located in valve boxes or a shallow vault. The pump panel can function as a lockable control works for purposes of water right administration.

We understand that the City plans to extend irrigation mains to the pump site. These irrigation mains include a connection to existing irrigation mainline located in Lions Park within approximately 650 feet of the proposed pump site, and a second to a pipeline which will be constructed under the Bullion Street bridge to supply Hop Porter Park. SPF’s drawings will show a 4-inch diameter pipe stubbed within 50 feet of the proposed intake well. Depending on construction timing, the City will either (1) stub the new mainlines at this point prior to the pump system construction, or (2) connect their mainlines to a pipe stubbed by the irrigation pump contractor. Alternatively, SPF can modify our scope to include installation of the irrigation mainlines.

As with the well, we assume that the City will provide general conditions and bidding instructions, and that the City will solicit bids for the work. SPF will be available to answer questions from potential bidders by telephone or email.

**Task 7. Pump System Bidding and Construction Administration.** The pump work can be bid out as a separate project, or as part of the well construction project. In either event, SPF will review contractor submittals, provide final inspection of pump installation, and verify that the installed components meet the performance requirements listed in specifications. Upon completion, SPF will provide as-built construction documents, including pump curve and equipment manuals.

We anticipate that City staff can provide day-to-day construction inspection. SPF will conduct one trip to the project site to provide a final inspection at the time of pump start up.
SCOPE OF WORK - NOT INCLUDED IN PROPOSAL

- Environmental assessment or environmental permitting
- Surveying
- Structural design (i.e., well house)
- Irrigation system design
- Irrigation distribution or transmission piping design
- Electrical (except pump motor control)
- Land use permitting
- Water right protest resolution

The services listed above can be provided under a separate authorization, if requested. However, we anticipate that they are not necessary for this project or will be provided by others under separate contracts.

ESTIMATED COSTS

SPF proposes to perform this work on a time and materials basis. A current hourly rate schedule is provided as Table 1. Direct costs (travel, photocopy, postage, etc.) are billed at actual cost plus 15%. Subcontract and laboratory costs can be billed directly where appropriate. Hourly rates are adjusted on an annual basis to reflect salary increases.

Our proposed budget is based on time and materials pricing with a not to exceed maximum of $15,000. The suggested cost for each task is shown in the table below.

<table>
<thead>
<tr>
<th>Task No.</th>
<th>Task Description</th>
<th>Estimated Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Site Selection</td>
<td>$200</td>
</tr>
<tr>
<td>2</td>
<td>Hydrogeologic Analysis</td>
<td>$1,000</td>
</tr>
<tr>
<td>3</td>
<td>Permitting</td>
<td>$1,800</td>
</tr>
<tr>
<td>4</td>
<td>Well Design</td>
<td>$2,500</td>
</tr>
<tr>
<td>5</td>
<td>Well Bidding and Construction Administration</td>
<td>$3,500</td>
</tr>
<tr>
<td>6</td>
<td>Pump System Design</td>
<td>$3,000</td>
</tr>
<tr>
<td>7</td>
<td>Pump System Bidding and Construction Administration</td>
<td>$3,000</td>
</tr>
</tbody>
</table>
AGREEMENT

If this proposal meets with your approval, it may serve as the basis for agreement, in conjunction with the attached schedule of fees and conditions, by affixing a signature in the space provided below. This signature will be considered as a notice to proceed with a budget upper limit of $15,000. We will let you know when we are approaching the budget limit, and then if additional tasks are required, the City can authorize additional budget.

Please return one signed original to my office. We look forward to working with you on this project.

Respectfully submitted,

SPF WATER ENGINEERING, LLC

By _____________________________
Terry M. Scanlan, P.E., P.G.
Manager

Accepted By:

CITY OF HAILEY

By _____________________________
Title ___________________________
Date ___________________________
<table>
<thead>
<tr>
<th>Personnel</th>
<th>Title</th>
<th>2012 Billing Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terry Scanlan, P.E., P.G.</td>
<td>Principal Engineer/Hydrogeologist</td>
<td>$150</td>
</tr>
<tr>
<td>Christian Petrich, Ph.D., P.E., P.G.</td>
<td>Principal Engineer/Hydrogeologist</td>
<td>$145</td>
</tr>
<tr>
<td>Cathy Cooper, P.E.</td>
<td>Principal Engineer</td>
<td>$135</td>
</tr>
<tr>
<td>Bob Hardgrove, P.E.</td>
<td>Principal Engineer</td>
<td>$135</td>
</tr>
<tr>
<td>Scott King, P.E.</td>
<td>Supervising Engineer</td>
<td>$133</td>
</tr>
<tr>
<td>Stuart Hurley, P.E.</td>
<td>Supervising Engineer</td>
<td>$133</td>
</tr>
<tr>
<td>Eric Landsberg, P.E.</td>
<td>Project Manager</td>
<td>$133</td>
</tr>
<tr>
<td>Brian Wilkinson, P.E.</td>
<td>Senior Project Engineer</td>
<td>$116</td>
</tr>
<tr>
<td>Roxanne Brown</td>
<td>Senior Water Right Specialist</td>
<td>$100</td>
</tr>
<tr>
<td>Jason Thompson, P.E.</td>
<td>Project Engineer</td>
<td>$97</td>
</tr>
<tr>
<td>Jesse Herndon, P.E.</td>
<td>Project Engineer</td>
<td>$97</td>
</tr>
<tr>
<td>Tofor Snider, P.E.</td>
<td>Project Engineer</td>
<td>$97</td>
</tr>
<tr>
<td>Lori Graves</td>
<td>Water Right Specialist</td>
<td>$88</td>
</tr>
<tr>
<td>Marci Pape, P.E.</td>
<td>Project Engineer</td>
<td>$88</td>
</tr>
<tr>
<td>Steve Bennett</td>
<td>Designer I</td>
<td>$85</td>
</tr>
<tr>
<td>Crane Drafting</td>
<td>Designer II</td>
<td>$85</td>
</tr>
<tr>
<td>Erik Boe, EIT</td>
<td>Associate Engineer</td>
<td>$75</td>
</tr>
<tr>
<td>Kurt Norrell, EIT</td>
<td>Associate Engineer</td>
<td>$75</td>
</tr>
<tr>
<td>Julie Romano</td>
<td>Bookkeeping</td>
<td>$65</td>
</tr>
<tr>
<td>Crystal Jensen</td>
<td>Administrative Support</td>
<td>$60</td>
</tr>
</tbody>
</table>

Note: Hourly billing rates will be adjusted on January 1st each year.
SCHEDULE OF FEES AND CONDITIONS

A. SPF WATER ENGINEERING, LLC (SPF)

FEES AND PAYMENT

1. The fee for services will be based on SPF’s standard hourly rates (including labor cost, overhead, and profit). Non-salary expenses directly attributable to the project, such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable reproduction costs applicable to the work; and (3) outside services will be charged at actual cost plus 10% service charge to cover overhead and administration. Hourly rates are adjusted on an annual basis.

2. Payment shall be due within 30 days after date of monthly invoice describing the work performed and expenses incurred during the preceding month.

3. OWNER agrees that timely payment is a material term of this Agreement and that failure to make timely payment as agreed constitutes a breach hereof. In the event payment for services rendered has not been made within 60 days from the date of invoice, SPF may, after giving 7 days written notice to OWNER, and without penalty or liability of any nature, and without waiving any claim against OWNER, suspend all work on all authorized services as set forth herein. Upon receipt of payment in full for services rendered, plus interest charges, SPF will continue with all services not inconsistent with Article C.4 herein. Payment of all compensation due SPF pursuant to this Agreement shall be a condition precedent to OWNER using any of SPF’s professional services work products furnished under this Agreement.

4. In order to defray carrying charges resulting from delayed payments, simple interest at the rate of 18% per annum (but not exceeding the maximum rate allowed by law) will be added to the unpaid balance of each invoice. The interest period shall commence 30 days after date of original invoice, and shall terminate upon date of payment. Payments will be first credited to interest and then to principal. No interest charge will be added during the initial 30-day period following date of invoice.

B. COMMENCEMENT OF WORK. The work will be commenced immediately upon receipt of written notice to proceed. If after commencement of work the project is delayed for any reason beyond the control of SPF for more than 60 days, the price and schedule for services under this Agreement are subject to revision. Subsequent modifications shall be in writing and signed by the parties to this Agreement.

C. MISCELLANEOUS PROVISIONS

1. INSURANCE/INDEMNIFICATION/LIMITATION OF LIABILITY

   (a) SPF will maintain statutory limits of insurance coverage for Workers’ Compensation and Employer’s Liability insurance as well as Professional Liability, General Liability and Automobile Liability Insurance and will name Owner as an additional insured on the Professional Liability, General Liability and Automobile Liability Insurance policies if specifically requested in writing.

   (b) SPF asserts that it is skilled in the professional calling necessary to the services and duties proposed to be performed, and that it shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals of SPF’s caliber in the same locality, and to that end SPF agrees to indemnify and hold harmless Owner, its officers, and employees from and against claims, suits, loss, damages, costs, and expenses arising out of or resulting from the negligent acts, errors, or omissions of SPF, its officers, employees or agents in the performance of its services and duties hereunder, but not from the negligence or willful misconduct of Owner, its officers, and employees. However in no event shall SPF be liable for any special, indirect, or consequential damages as a result of its
performance of the services hereunder. The total aggregate of SPF's liability to all parties related to this Agreement shall not exceed $50,000, or the amount of SPF's fee, whichever is less.

(c) Owner hereby understands and agrees that SPF has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Owner's premises, or in connection with or related to this project with respect to which SPF has been retained to provide professional engineering services. The compensation to be paid SPF for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, Owner agrees to defend, indemnify, and hold SPF, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including but not limited to, attorney's fees and court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalies, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

(d) Nothing contained within this Agreement shall be construed or interpreted as requiring SPF to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, §6901 et seq., as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste. Further, the contents of this Agreement shall not be construed or interpreted as requiring SPF to arrange for the transportation, treatment, or disposal of hazardous substances, as described in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USCA §9601, et seq., as amended.

(e) Notwithstanding any provisions in this Agreement to the contrary, if this project involves construction, as that term is generally understood, and SPF does not provide engineering services during construction, including but not limited to, on-site monitoring, site visits, shop drawing review, and design clarifications, Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless from any and all liability arising out of the construction.

(f) SPF shall not be liable for damages arising out of or resulting from the actions or inaction of governmental agencies, including but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of SPF, arising out of or resulting from the same.

(g) Notwithstanding other terms of this Agreement to the contrary, SPF makes no warranty, whether express or implied, as to the actual capacity or drawdown of any proposed water well(s), or the quality or temperature of ground water, if any, which may be produced by any water well(s) to be drilled and developed pursuant to this Agreement. Owner understands and agrees that SPF's responsibility under this Agreement is to apply its hydrogeology expertise, and to exercise the usual standard of care in the engineering profession to develop what ground water may reasonably exist, and may be economically feasible to use, beneath the proposed site(s).

2. DOCUMENTS
(a) All tracings, survey notes, and other original documents, as instruments of service, are and shall remain the property of SPF, except where by law or precedent these documents become public property. Owner agrees to hold harmless, indemnify, and defend SPF, its consultants, agents, and employees against all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications without the written authorization of SPF.

(b) All computer programs, software, and other like data developed during the course of the project, unless specifically developed for Owner, are and shall remain the sole property of SPF.

(c) SPF's liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. SPF makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by SPF under this Agreement. In no event shall SPF, its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.

(d) Environmental Audit/Site Assessment report(s) are prepared for Owner's sole use. Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless against all damages, claims, expenses, and losses arising out of or resulting from any reuse of the Environmental Audit/Site Assessment report(s) without the written authorization of SPF.

3. TERMINATION OR ABANDONMENT. If any portion of the work is terminated or abandoned by Owner, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services performed during such phase shall be based on SPF's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse SPF for termination costs.

4. WAIVER. SPF's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.

5. ENTIRE AGREEMENT. This Agreement, and its attachments, contains the entire understanding between Owner and SPF relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.

6. SUCCESSORS AND ASSIGNS. All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

7. CONSTRUCTION ESTIMATES. Estimates of cost for the facilities considered and designed under this Agreement are prepared by SPF through exercise of its experience and judgement in applying presently available cost data, but it is recognized that SPF has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that SPF cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from SPF's cost estimates.

8. INJURY TO WORKERS. It is understood and agreed that SPF's fee is based on SPF being named as an Additional Insured on construction contractor's insurance policy for Comprehensive General Liability and Builders All Risk Liability, and Owner agrees to insert into all contracts for construction between
Owner and construction contractor(s) arising out of this design a provision requiring the construction contractor(s) to defend, indemnify, and hold harmless both Owner and SPF from any and all actions arising out of the construction project, including but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Owner or SPF.

9. **SITE VISITS.** Visits to the construction site and observations made by SPF as part of services during construction under this Agreement shall not make SPF responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make SPF responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s), and for all safety precautions incidental thereto. Such visits by SPF are not to be construed as part of the monitoring duties of the on-site monitoring personnel defined below.

10. **ON-SITE MONITORING.** When SPF provides on-site monitoring personnel as part of services during construction under this Agreement, the on-site monitoring personnel will make reasonable efforts to guard Owner against defects and deficiencies in the work of the contractor(s), and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day monitoring will not, however, cause SPF to be responsible for those duties and responsibilities which belong to the construction contractor(s), including but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.

11. **SEVERABILITY.** If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.
AGENDA ITEM SUMMARY

DATE: 6/4/12   DEPARTMENT: PW - Parks   DEPT. HEAD SIGNATURE: 

SUBJECT: Order a precast concrete Ozark 1 restroom for the skatepark from CXT Precast Concrete Products for $30,940.

AUTHORITY: □ ID Code ________  □ IAR _________  □ City Ordinance/Code ________  
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED: 
With the restrooms for the skatepark that were planned as a part of the Hailey Ice building being delayed a more permanent solution for restrooms at the skatepark is needed. Presently we use port-a-potties for the summer months. The recommended restroom will also include a drinking fountain for the skaters.

CXT Precast Concrete Products has previously supplied the restrooms at Keefer and McKercher parks and have been shown to be of quality construction. The attached quote shows $30,515 but it is my recommendation to add the skylight to this order for better lighting of the restroom. PW Department personnel will prepare the site for the restroom and a plumber will be needed for the final hook-ups.

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 Administrator  □ Library  □ Benefits Committee  
□ City Attorney  □ Mayor  □ Streets  
□ City Clerk  □ Planning  □ Treasurer  
□ Building  □ Police  □  
□ Engineer  □ Public Works, Parks  □  
□ Fire Dept.  □ P & Z Commission  □  

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD: 
Approve the ordering of the Ozark 1 precast concrete restroom from CXT Precast Concrete Products for the price of $30,940.

ADMINISTRATIVE COMMENTS/APPROVAL:

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

ACTION OF THE CITY COUNCIL: 
Date ________________________________________________

City Clerk ________________________________

FOLLOW-UP:
*Ord./Res./Agrmt./Order Originals: Record Copies (all info.): ________________________________
Instrument # ________________________________  *Additional/Exceptional Originals to: ________________________________
Copies (AIS only) ______________________________________

- 29 -
CITY OF HAILEY
RESOLUTION NO. 2012-36

RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING PURCHASE OF RESTROOM FROM OZARK 1, FOR THE
SKATEPARK

WHEREAS, the City of Hailey desires to enter purchase a precast concrete restroom
from Ozark 1 for $30,940. Ozark 1 will then provide this precast restroom to the City of Hailey.

WHEREAS, the City of Hailey and Ozark 1 have agreed to the terms and conditions of
the purchase, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF HAILEY, IDAHO, that the City of Hailey approves the purchase from Ozark 1 and
that the Mayor is authorized to execute the attached price quote,

Passed this 4th day of JUNE, 2012.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk
Ozark I with chase restroom building. Standard features include simulated barnwood texture walls, simulated cedar shake textured roof, vitreous china fixtures, interior and exterior lights, off loaded and set up at site.

<table>
<thead>
<tr>
<th>Base Price</th>
<th>Original Amount</th>
<th>Reduced Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ozark I</td>
<td>$22,250.00</td>
<td>$22,250.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Added Cost Options</th>
<th>Original Amount</th>
<th>Reduced Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final connection to utilities</td>
<td>$2,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Optional Wall Texture - choose one</td>
<td>Split Face Block</td>
<td>$1,200.00</td>
</tr>
<tr>
<td>Optional Roof Texture - choose one</td>
<td>Delta Rib</td>
<td>$900.00</td>
</tr>
<tr>
<td>Two-Tone Color Scheme</td>
<td>$250.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Stainless Steel Plumbing Fixtures</td>
<td>$850.00</td>
<td>$850.00</td>
</tr>
<tr>
<td>Vitreous China Urinal (each) Qty: 1</td>
<td>$765.00</td>
<td>$0.00</td>
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<tr>
<td>Stainless Steel Urinal (each) Qty: 1</td>
<td>$1,100.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Electric Hand Dryers</td>
<td>$1,060.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Electronic Flush Valves - Building without Urinals</td>
<td>$475.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Electronic Flush Valves for Optional Urinal (price per urinal) Qty: 1</td>
<td>$475.00</td>
<td>$0.00</td>
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<tr>
<td>Electronic Lavatory Faucets</td>
<td>$475.00</td>
<td>$0.00</td>
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<tr>
<td>Exterior Mounted ADA Drinking Fountain</td>
<td>$2,700.00</td>
<td>$2,700.00</td>
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<tr>
<td>Insta-Hot Hot Water Heater</td>
<td>$575.00</td>
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</tr>
<tr>
<td>Skylight in Restroom (each) Qty: 1</td>
<td>$425.00</td>
<td>$0.00</td>
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<tr>
<td>Marine Grade Skylight in Restroom (each) Qty: 1</td>
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<tr>
<td>Marine Package for Extra Corrosion Resistance</td>
<td>$2,750.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Tile Floor in Restroom</td>
<td>$1,750.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Fiberglass Entry and Chase Doors and Frames</td>
<td>$2,300.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Vandiguard Ten</td>
<td>$2,500.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Magnetic Door Lock System (does not include chase door)</td>
<td>$2,200.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Exterior Frostproof Hose Bib with Box</td>
<td>$385.00</td>
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<tr>
<td>Paper Towel Dispenser</td>
<td>$85.00</td>
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<tr>
<td>Toilet Seat Cover Dispenser</td>
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<tr>
<td>Sanitary Napkin Dispenser</td>
<td>$48.00</td>
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<tr>
<td>CXT Wastebasket</td>
<td>$50.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>Paint Touch up Kit - Single Color</td>
<td>$40.00</td>
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</tr>
<tr>
<td>Paint Touch up Kit - Two Tone Color</td>
<td>$50.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Total Cost of Selected Accessories from Accessories Price List: $3,550.00

Estimated One-Way Transportation Costs to Site (quote): $3,465.00

Custom Options: Idaho State design review, inspection, and tags

Total Cost per Unit Placed at Job Site: (excludes all taxes) $30,815.00

This price quote is good for 60 days from date below, and is accurate and complete.

Eric Kuester
CXT Sales Representative

I accept this quote. Please process this order.

Company Name
Customer
Date

Date: 2012-04-27 14:46:45 -0700
Concrete Buildings

CXT Precast Concrete Products manufactures restroom, shower and concession buildings in multiple designs, textures and colors. The roof and walls are fabricated with high strength precast concrete to meet all local building codes and textured to match local architectural details. All CXT buildings are designed to meet A.D.A. and to withstand heavy snow, high wind and category E seismic loads. All concrete construction also makes the buildings easy to maintain and withstand the rigors of vandalism. The buildings are prefabricated and delivered complete and ready-to-use, including plumbing and electrical where applicable. With thousands of satisfied customers nationwide, CXT is the leader in prefabricated concrete restrooms.

1. ORDERING ADDRESS(Es): CXT Precast Products, Inc., 3808 N. Sullivan Road, Building 7, Spokane, WA 99216
2. ORDERING PROCEDURES: Fax 509-928-8270
3. PAYMENT ADDRESS(Es): CXT Precast Products, Inc., 3808 N. Sullivan Road, Building 7, Spokane, WA 99216
4. WARRANTY PROVISIONS: CXT provides a warranty against defects in material or workmanship for a period of twenty (20) years on all concrete components. The warranty is valid only when concrete is used within the specified loadings. Furthermore, said warranty includes only the related material necessary for the construction and fabrication of said concrete components. All other non-concrete components will carry a one (1) year warranty. CXT warrants that all goods sold pursuant hereto will, when delivered, conform to specifications set forth above. Goods shall be deemed accepted and meeting specifications unless notice identifying the nature of any non-conformity is provided to CXT in writing within the specified warranty. CXT, at its option, will repair or replace the goods or issue credit for the customer provided CXT is first given the opportunity to inspect such goods. It is specifically understood that CXT's obligation hereunder is for credit, repair or replacement only, F.O.B. CXT's manufacturing plants, and does not include shipping, handling, installation or other incidental or consequential costs unless otherwise agreed to in writing by CXT.

This warranty shall not apply to:

1. Any goods which have been repaired or altered without CXT's express written consent, in such a way as in the reasonable judgment of CXT, to adversely affect the stability or reliability thereof;
2. To any goods which have been subject to misuse, negligence, acts of God or accidents or
3. To any goods which have not been installed to manufacturer's specifications and guidelines, improperly maintained, or used outside of the specifications for which such goods were designed.

5. TERMS AND CONDITIONS OF INSTALLATION (IF APPLICABLE): All prices subject to the "Conditions of Sale" listed on the CXT quotation form.

Customers are responsible for marking exact location building is to be set; Providing clear and level site, free of overhead and/or underground obstructions; and Providing site accessible to normal highway trucks and sufficient area for the crane to install and other equipment to perform the contract requirements. Customer shall provide notice in writing of low bridges, roadway width or grade, unimproved roads or any other possible obstacles to access. CXT reserves the right to charge the customer for additional costs incurred for special equipment required to perform delivery and installation. Customers will negotiate installation on a project-by-project basis, which shall be priced as separate line items. For more information regarding installation and truck turning radius guidelines please see our website at www.cxtinc.com.

In the event delivery of the building/s ordered is/are not completed within 30 days of the agreed to schedule through no fault of CXT, an invoice for the full contract value (excluding shipping and installation costs) will be submitted for payment. Delivery and installation charges will be invoiced at the time of delivery and Installation.

Should the delivery and installation costs increase due to changes in the delivery period, this increase will be added to the price originally quoted, and will be subject to the contract payment terms.

In the event that the delivery is delayed more than 90 days after the agreed to schedule and through no fault of CXT, then in addition to the remedies above, a storage fee of 1½% of contract price per month or any part of any month will be charged.

**Customer is responsible for all local permits and fees

6. DELIVERY CHARGE: All prices F.O.B. Origin prepaid and added to invoice. CXT operates two (2) manufacturing plants in the United States and will deliver from the closest location on our carriers.

7. PAYMENT TERMS: Payment to CXT by the purchaser shall be made net 30 days after submission of the invoice to the purchaser on approved credit. Interest at a rate equal to the lower of (i) the highest rate permitted by law; or (ii) 1.5% per month will be charged monthly on all unpaid invoices beginning with the 35th day (includes 5 day grace period) for the date of the invoice. Under no circumstance can retention be taken. If CXT initiates legal proceeding to collect any unpaid amount, purchaser shall be liable for all of CXT's costs expenses and attorneys' fees and costs of any appeal.

DELIVERY INFORMATION:

All prices F.O.B. Origin prepaid and added to invoice. CXT operates two (2) manufacturing plants in the United States and will deliver from the closest location on our carriers. Use the following chart to determine the origin:

- F.O.B. 3808 N. Sullivan Road, Building 7, Spokane, WA 99216 applies to: AK, CA, HI, ID, MT, ND, NV, OR, SD, UT, WA, WY.
- F.O.B. 901 North Highway 77, Hillsboro, TX 76645 applies to: AL, AR, AZ, CO, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, NE, NH, NJ, NM, NY, OH, OK, PA, PR, RI, SC, TN, TX, VA, VT, WI, WV.

Prices exclude all Federal/State/Local taxes. Tax will be charged where applicable if customer is unable to provide proof of exemption.

- Pricing is subject to change without notice;
- Engineered stamped drawings may incur additional charges.

For more information visit us at www.cxtinc.com or call (800) 696-5766.
FOR REFERENCE ONLY

- 6' DIA ELECTRICAL BLOCKOUT
- 4' CEILING MOUNTED FLUORESCENT LIGHTING FIXTURE
- OPTIONAL 2" FLOOR DRAIN (FIELD INSTALLED)
- 16x24 PLUMBING BLOCKOUT
- 10x6' TILES TURF CIRCLE
- OPTIONAL WASTE PAPER BASKET MOUNT 8X10" OFF FINISHED FLOOR
- OPTIONAL ABU DRINKING FOUNTAIN

-35-
AGENDA ITEM SUMMARY

DATE: 6/04/12 DEPARTMENT: Administration DEPT. HEAD SIGNATURE: Heather Dawson

SUBJECT

Use Agreement with Scottish Festival for Arena use for their DARE-PAL fundraising event on June 16, 2012

AUTHORITY: ☐ ID Code ☐ IAR _______ ☐ City Ordinance No. 840

BACKGROUND:

Scottish Festival has previously held its small but growing event at the Nelson Field. They would like to hold it in the Arena this year on Saturday, June 16, 2012. The attached Use Agreement has been structured to fit their needs – we have established a flat fee of $500 for this day use, which will cover our costs for cleaning the Family Restroom, the only one which needs to be opened up for this small event.

In addition to covering clean-up, we expect an approximate $200 profit toward our depreciation needs at the Arena.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Budget Line Item # Annual Line Item Amount

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

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

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss and adopt the Use agreement.

FOLLOW UP NOTES:
CITY OF HAILEY
RESOLUTION NO. 2012-37

RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE USE AGREEMENT WITH BLAINE COUNTY SCOTTISH
FESTIVAL AND HIGHLAND GAMES, FOR USE OF THE OUTDOOR MULTI-USE
ARENA

WHEREAS, the City of Hailey desires to enter into an agreement with Blaine County
Scottish Festival And Highland Games under which Blaine County Scottish Festival And
Highland Games will use the outdoor multi-use arena in the City of Hailey.

WHEREAS, the City of Hailey and Blaine County Scottish Festival and Highland Games
have agreed to the terms and conditions of the Use Agreement, a copy of which is attached
hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF HAILEY, IDAHO, that the City of Hailey approves the Use Agreement between the
City of Hailey and Blaine County Scottish Festival and Highland Games and that the Mayor is
authorized to execute the attached Use Agreement quote,

Passed this 4th day of JUNE, 2012.

City of Hailey

____________________________
Fritz X. Haemmerle, Mayor

ATTEST:

____________________________
Mary Cone, City Clerk
ARENA RESERVATION FORM - large group

Event Name: Blaine County Scottish Festival and Highland Games
Type of Event: Fundraiser for the Blaine County P.A.L. program
Event Dates: June 16, 2012
Set-up/Clean-up Dates: June 16, 2012
# of anticipated attendees for event: Total: ~250
Per Day: ~250

Applicant Information
Name: Daniel Turner
Email: dturner@co.blaine.id.us
Mailing Address: PO Box 4771
Hailey, ID 83333
Phone #: 205-789-9808

Organization Information (if applicable)
Name: SAAA-Northern Rockies
Email: Ron.Campbell@SAAA-National.org/
Eric.Ettesvoid@SAAA-National.org
Mailing Address: 1705 Fillmore Street
Caldwell, ID 83605
Phone #: (Ron) 208-249-5316/(Eric) 208-490-6470

Overview of Fees:
- $500 per day for use of Arena and bleachers, fee charged for set-up and clean-up days also.
- $250 per day of use for the concession area
- $1.00 per ticket priced up to $20. Additional fee of 5% on tickets priced over $20
- 6% State Sales Tax on use fees (not on Security Deposit)

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

Refundable Security Deposit $500.00
½ of use fees due at time of reservation [# of days_____] (½) $500.00/day $500.00 paid.

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

Total Due to Reserve Arena: __________________

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

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

15/03/ARENA RESERVATION (2/1/12)
In an effort to invite a variety of weekend events, and to assist event producers as needed, an individual agreement for each event will be required, with some flexibility based on event producer's needs to elements outlined below.

1. The event shall not cause a public safety hazard to the remainder of the city by interrupting emergency response by police, fire and ambulance.

2. The set-up and removal of the facilities needed for the event and operation of the event shall be conducted, designed, constructed, operated and maintained to be harmonious and appropriate with the Arena facility.

3. The event shall not substantially interrupt the safe and orderly movement of traffic contiguous and near its venue. A parking and shuttle plan shall be required as part of an event agreement.

4. The event shall not be reasonably likely to cause injury to persons or property, to result in disorderly conduct or to create a disturbance.

5. Adequate steps shall be provided for protection of persons and property, which may include proof of general liability insurance coverage in the minimum amount of one million dollars naming the city as an additional named insured.

6. Adequate trash receptacles and/or dumpsters, portable toilets, recycling containers and crowd control measures shall be provided. The city will evaluate each event and be allowed broad discretion on the number of trash receptacles and/or dumpsters and portable toilets required. For high impact events, such as concerts, the applicant shall provide, at a minimum, one six yard dumpster per 500 people, one permanent or portable bathroom per 100 people, unless the applicant can demonstrate that modification of the requirements is justified. In addition, the applicant shall be responsible for providing all traffic and pedestrian control devices, such as cones, barricades, flags, signs and ropes.

7. If required, a security plan shall be approved by the Hailey chief of police, an emergency medical care and ambulance support plan shall be approved by the Hailey fire chief, a traffic, parking and busing plan for the event shall be approved by the Hailey fire chief and police chief, and/or a lighting plan for the special event shall be approved the Hailey lighting administrator.

8. The applicant shall agree to indemnify, defend and hold harmless the city and its officers and employees from any and all demands, claims or liability of any nature, caused by or arising out of, or connected with the special event.

9. The applicant has made no false statements or misrepresentations upon any present or former application for an event agreement.

10. The applicant has not substantially violated any provision of city, state or federal laws, in conducting any previous event.

11. The event is subject to other applicable city, state, federal or other governmental rules, regulations or laws, including but not limited to regulations pertaining to glass containers, signage, lighting, and noise.

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

This Use Agreement ("Agreement") is made this _____ day of __________, 2012, by and between CITY OF HAILEY, a municipal corporation ("City") and Blaine County Scottish Festival and Highland Games, an Idaho non-profit corporation ("USER").

RECITALS

A. The City is a municipal corporation and political subdivision of the State of Idaho. Fritz X. Haemmerle is the duly elected and acting mayor of the City of Hailey.

B. USER is a duly organized and operating non-profit corporation in the State of Idaho. Ron Campell is the duly elected and acting president of USER. By resolution, the president of USER is authorized to execute this Agreement.

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

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

AGREEMENT

NOW, THEREFORE, based upon the foregoing recitals which are incorporated in this Agreement below as though set forth in full, the parties agree as follows:

1. Agreement Term. USER shall have the exclusive right to use the Arena on June 16, 2012 ("Event"). USER shall also have the right to inspect and use the Arena before the Event, including on June 15, 2012 for set up of equipment for the event.

2. Rent. USER shall pay to City as minimum rent for the Arena of Five Hundred and no/100's Dollars ($500.00), receipt of which is hereby acknowledged.

3. Use of Arena. The Arena may be used and occupied by USER only as a public facility as a sporting event facility, as a concession area and as parking, and for no other purpose or purposes without City's prior written consent. During periods of non-use of the Arena during the Event, USER shall lock and secure all bathrooms, concession areas and security gates within the Arena, to keep members of the general public out of all secured areas. USER shall be responsible for the watering of the internal dirt portion of the Arena during the Event. USER shall not do or permit anything to be done in or about the Arena or bring or keep anything in the Arena that will in any way increase the rate of fire insurance upon the building in which the Arena is situated. USER shall not perform any acts or carry on any practices that may injure the Arena or the building of which the Arena form a part, which are not normally associated with an
equestrian event. USER agrees to comply with (and cause its agents, contractors, employee and invitees to comply with) any rules and regulations with reasonable modification hereof which City may from time to time make and deliver to USER in writing, provided the City provides USER with thirty (30) days advance notice of a hearing to consider the proposed rules and regulations and provided any adopted rules and regulations are effective sixty (60) days before the beginning of any Event.

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

   a) USER shall clean and restore the Arena to its condition at the commencement of each Event, less normal wear and tear associated with an equestrian event.

   b) USER shall have remedied or repaired any damage to the Arena to City’s satisfaction.

   c) USER shall have complied with all of the provisions of this Agreement and with such other rules and regulations as the City may deem necessary.

   If USER defaults with respect to any provision of this Agreement, including but not limited to the provisions relating to the payment of the monetary sums due herewith, City may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any other amount which City may spend by reason of USER’s default or to compensate City for any other loss or damage which City may suffer by reason of USER’s default.

5. **Utilities.**

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

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

USE AGREEMENT/2
within thirty (30) days of the date of billing for such charges.

6. **Insurance.** During the Events, USER shall, at its own expense, maintain in full force, comprehensive liability insurance, including public liability, property damage and contractual liabilities of USER, written by a responsible insurance company licensed to do business in Idaho, and insuring USER and City (and such other persons, firms, or corporations designated by City) as additional named insureds against liability for claims of damage because of injury to persons and property and for death of any person or persons occurring in or about the Arena. The liability covered by such insurance shall be not less than a combined single limit of One Million Dollars ($1,000,000). At City’s reasonable discretion, USER shall increase the coverage to such amount as City and USER agree is commercially reasonable. The insurance shall be primary insurance such that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage held by City.

No party shall have the right or claim against the City for any losses, damages or injury, including losses, damages or injury to property or persons, including death, and for any business interruption, occurring on the Arena or the adjoining property, (whether caused by the negligence or other fault of the City or the USER or their respective agents, employees, subtenants, licensees or assignees or whether caused by negligence or the conditions of the Arena or any part thereof) by way of subrogation or assignment. The USER hereby waives and relinquishes any such right. The USER shall request USER’s insurance carrier to endorse all applicable policies waiving the carrier’s right of recovery under subrogation or otherwise in favor of the City and provide a certificate of insurance verifying this waiver.

All insurance required by this Section shall be in a form and with companies satisfactory to City and shall provide that it shall not be subject to cancellation or change except after at least thirty (30) days’ prior written notice to City. The policy or policies, or duly executed certificates for them, shall be deposited with City each year within fifteen (15) days before each Event.

7. **Exemption from Liability.** City shall not be liable to USER or to any other person whomsoever for any injury or damage to person or property occurring within or about the Arena, unless caused by or resulting from the willful and intentional acts of the City or any of the City’s agents, servants or employees in the operation or maintenance of the Arena. City shall not be liable in damages or otherwise for failure to furnish, or any interruption of service of any water, gas, electricity, telephone, or other utility caused by fire, accident, riot, strike, labor disputes, acts of God, the making of any repairs or improvements, or causes beyond the control of City, or for any loss, damage or theft of property of USER, its agents, servants or employees.

Any prevention, delay, or stoppage, due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control for the party

USE AGREEMENT/3
obligated to perform shall excuse performance by such party for a equal to any such prevention, delay or stoppage, except as otherwise provided in this Agreement.

8. **Indemnification and Hold Harmless.** USER agrees to indemnify and hold City harmless from and against any and all claims, including mechanic's and materialman's liens, by or on behalf of any person or person, firm(s) or corporation(s), arising from the conduct or management of the activities conducted by the USER during the Events, or arising out of any act or omission or negligence of USER, its contractors, licensees, agents, servants or employees during the Events, or arising from any accident, injury, or damage whatsoever caused by any person or property occurring in or about the Arena or any part thereof, and the walkways adjoining the Arena during the Events, and from and against all costs, expenses, liabilities and attorney's fees incurred in connection with any such claim or proceeding brought thereon.

9. **Maintenance and Repairs.** Except as otherwise provided herein, USER shall, at its sole cost and expense, keep and maintain the interior and exterior of the Arena (including, without limitation, all fixtures, plumbing and sewage facilities, heating, ventilation and air conditioning equipment, ice making equipment, interior and exterior walls, doors and windows) in good order, condition and repair during the Events, remove all rubbish and refuse therefrom, keep all landscaping in good condition, and replace or repair all electrical fixtures and mechanical, heating and plumbing fixtures and equipment that may be damaged or broken. In the event any portion of the Arena is damaged by vandalism or similar intentional misconduct during the Events, USER is not obligated to repair any such damage. USER shall, at its sole cost and expense, remove all manure from the Arena before the end of each Event or store the manure on site allowing it to decompose but only if allowed by City staff. If City deems it necessary for USER to make any repairs, City may demand that USER make them immediately, and if USER refuses or neglects to commence such repairs and to complete them with reasonable dispatch, City may make or cause such repairs to be made and USER shall immediately pay City for the costs of such repairs upon receipt of the costs. USER shall, at its cost and expense, promptly and properly observe, comply with, and execute, but not to the extent of making structural improvements, all present and future orders, regulations, directions, rules, laws, ordinances and requirements of all governmental authorities (including, but not limited to, state, municipal, county and federal governments and their departments, bureaus, boards and officials), and any other board or organization exercising similar functions, arising from the use or occupancy of, or applicable to the Arena.

10. **Alterations and Improvements.** USER shall not have the right to make changes, alterations or additions to the Arena without the prior written consent of the City, which may be withheld in the City's sole and absolute discretion.

11. **Damage or Destruction.** If the Arena is partially or totally destroyed or damaged by fire or other casualty so as to become partially or totally untenable, the City is not required to rebuild the Arena, in which event either the City or USER may terminate this Agreement by providing written notice of intent to terminate. Upon termination, USER waives any and all claims for damages based on termination of this Agreement and any loss of use.

USE AGREEMENT/4
12. Defaults. In the event USER shall breach USER's obligations pursuant to this Agreement, then City shall notify USER of such breach in writing by certified mail, return receipt requested, or hand delivery, and USER shall correct any failure to pay rent within three (3) days of receipt of such notification, and USER shall cure any other breach within thirty (30) days of the date of such notification. In the event of a default which cannot, with due diligence, be cured within a period of thirty (30) days, USER shall have such additional time to cure the same as may be reasonably necessary, providing proceeds promptly and with due diligence to cure such default after receipt of said notice. In the event USER fails to pay any sums due pursuant to this Agreement, or cure any other breach, after notice as aforesaid, then City shall have the option of electing to either (i) cancel and terminate this Agreement, or (ii) terminate USER's right to possession only without terminating the Agreement or (iii) pursue any other remedy available at law or in equity.

13. Entry by City. In the event of any entry in, or taking possession of, the Arena, City shall have the right, but not the obligation, to remove from the Arena all personal property of USER located therein and may store the same in any place selected by City, including but not limited to a public warehouse, at the expense and risk of the owners thereof, with the right to sell such stored property, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, if any, and third to the payment of any other sums of money which may then be due from USER to City under any of the terms hereof, and the balance, if any, shall be paid to USER.

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

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

16. Waiver. The failure of either party hereto to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any election herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, and the same shall be and remain in full force and effect. A particular waiver by either party of any said covenants or agreements to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants or agreements of this Agreement.

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


a. **Final Agreement.** This Agreement represents the final agreement between the parties and merges and supersedes all prior negotiations, whether written or oral, with respect thereto.

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

c. **Time is of the Essence.** Time and timely performance is of the essence of this Agreement.

d. **Applicable Law.** This Agreement shall be construed and enforced under the laws of the State of Idaho.

e. **Benefit.** This Agreement shall be binding upon and insure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns.

f. **Attorney’s Fees.** In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover their reasonable costs and attorney’s fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals.

g. **Presumption.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by either party.

h. **Notice.** Unless otherwise specifically provided for herein, notices given pursuant to the terms of this Agreement shall be deemed received on the date sent and shall be sent to the parties at their addresses first above given or such address as may be later specified by the party in writing.

i. **Further Action.** The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.
j. **Authority.** Each signatory has full authority and consent to sign this Agreement. USER represents and warrants to City that it is a corporation organized, existing and in good standing under the laws of the State of Idaho, and it is authorized, by appropriate corporate resolution, to enter into and execute this Agreement and any and all documents related thereto.

k. **Severability.** The invalidity or illegality of any provision shall not affect the remainder of this Agreement.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Dated this _____ day of May, 2011.

CITY:

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By:_________________________ By:_________________________

Mary Cone, City Clerk             Fritz X. Haemmerle, Mayor

USER:

BLAINE COUNTY SCOTTISH FESTIVAL and HIGHLAND GAMES, an Idaho non-profit corporation

_________________________

Ron Campell, its President
AGENDA ITEM SUMMARY.

DATE: 6/04/12 DEPARTMENT: Administration DEPT. HEAD SIGNATURE: Heather Dawson

SUBJECT

Use Agreement with Blaine County Fair Board for Arena use for their Blaine County Fair horse show on Saturday August 4, 2012/

AUTHORITY: □ ID Code □ IAR ___________ □ City Ordinance No. 840

BACKGROUND:

The Blaine County Fair Board would like to hold the horse show event associated with the Blaine County Fair in Hailey’s Arena this year on Saturday, August 4, 2012. The attached Use Agreement has been structured to fit their needs – we have established a flat fee of $200 for this day use, which will generate an approximate $200 profit toward our depreciation needs at the Arena. The BCFB has sufficient volunteers to clean the entire sight without any costs being covered by the City of Hailey, including cleaning of the restrooms.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Budget Line Item # Annual Line Item Amount

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

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

_____ City Attorney _____ Clerk / Finance Director _____ Engineer _____ Mayor

_____ P & Z Commission _____ Parks & Lands Board _____ Public Works _____ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss and adopt the Use agreement.

FOLLOW UP NOTES:
CITY OF HAILEY
RESOLUTION NO. 2012-38

RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE USE AGREEMENT WITH BLAINE COUNTY FAIR BOARD,
FOR USE OF THE OUTDOOR MULTI-USE ARENA

WHEREAS, the City of Hailey desires to enter into an agreement with Blaine County Fair Board under which Blaine County Fair Board will use the outdoor multi-use arena in the City of Hailey.

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

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

Passed this 4th day of JUNE, 2012.

City of Hailey

_________________________________
Fritz X. Haemmerle, Mayor

ATTEST:

_________________________________
Mary Cone, City Clerk
USE AGREEMENT

This Use Agreement ("Agreement") is made this ______ day of ________, 2012, by and between CITY OF HAILEY, a municipal corporation ("City") and Blaine County Fair Board, an Idaho non-profit corporation ("BCFB").

RECITALS

A. The City is a municipal corporation and political subdivision of the State of Idaho. Fritz X. Haemmerle is the duly elected and acting mayor of the City of Hailey.

B. BCFB is a duly organized and operating non-profit corporation in the State of Idaho. Kyle Green is the duly elected and acting president of Fair Board. By resolution, the president of BCFB is authorized to execute this Agreement.

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

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

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

AGREEMENT

NOW, THEREFORE, based upon the foregoing recitals which are incorporated in this Agreement below as though set forth in full, the parties agree as follows:

1. Agreement Term. BCFB shall have the exclusive right to use the Arena on the Saturday preceding the Blaine County Fair, August 4, 2012 ("Event"). BCFB shall also have the right to inspect and use the Arena before the Event.

2. Rent. BCFB shall pay to City as minimum rent for the Arena of Two Hundred and no/100’s Dollars ($200.00). The $200 for each annual event shall be paid to the City before August 1 of each year of this Agreement.

3. Use of Arena. The Arena may be used and occupied by BCFB only as a public facility as an equestrian facility, as a concession area and as parking, and for no other purpose or
purposes without City’s prior written consent. During periods of non-use of the Arena during the Event, BCFB shall lock and secure all bathrooms, concession areas and security gates within the Arena, to keep members of the general public out of all secured areas. BCFB shall be responsible for the watering of the internal dirt portion of the Arena during the Event. BCFB shall not do or permit anything to be done in or about the Arena or bring or keep anything in the Arena that will in any way increase the rate of fire insurance upon the building in which the Arena is situated. BCFB shall not perform any acts or carry on any practices that may injure the Arena or the building of which the Arena form a part, which are not normally associated with an equestrian event. BCFB agrees to comply with (and cause its agents, contractors, employee and invitees to comply with) any rules and regulations with reasonable modification hereof which City may from time to time make and deliver to BCFB in writing, provided the City provides BCFB with thirty (30) days advance notice of a hearing to consider the proposed rules and regulations and provided any adopted rules and regulations are effective sixty (60) days before the beginning of any Event.

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

   a) BCFB shall clean and restore the Arena to its condition at the commencement of each Event, less normal wear and tear associated with an equestrian event.

   b) BCFB shall have remedied or repaired any damage to the Arena to City’s satisfaction.

   c) BCFB shall have complied with all of the provisions of this Agreement and with such other rules and regulations as the City may deem necessary.

   If BCFB defaults with respect to any provision of this Agreement, including but not limited to the provisions relating to the payment of the monetary sums due herewith, City may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any other amount which City may spend by reason of BCFB’s default or to compensate City for any other loss or damage which City may suffer by reason of BCFB’s default.

5. **Utilities.**

   A. City shall pay for all charges for electricity, water, sewer, trash, and cleaning services, rendered or supplied upon or in connection with the Arena during the Events. In the event the expenses for each annual event exceeds $200, BCFB shall pay City the difference.
between the expenses for each annual event and $200 within thirty (30) days of the date of billing for the excess charges. In the event the expenses for each annual event are less than $200, the City is not required to reimburse BCFB for any difference and shall be entitled to retain the difference.

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

6. Insurance. During the Events, BCFB shall, at its own expense, maintain in full force, comprehensive liability insurance, including public liability, property damage and contractual liabilities of BCFB, written by a responsible insurance company licensed to do business in Idaho, and insuring BCFB and City (and such other persons, firms, or corporations designated by City) as additional named insureds against liability for claims of damage because of injury to persons and property and for death of any person or persons occurring in or about the Arena. The liability covered by such insurance shall be not less than a combined single limit of One Million Dollars ($1,000,000). At City’s reasonable discretion, BCFB shall increase the coverage to such amount as City and BCFB agree is commercially reasonable. The insurance shall be primary insurance such that the insurer shall be liable for the full amount of the loss without the right of contribution from any other insurance coverage held by City.

No party shall have the right or claim against the City for any losses, damages or injury, including losses, damages or injury to property or persons, including death, and for any business interruption, occurring on the Arena or the adjoining property, (whether caused by the negligence or other fault of the City or the BCFB or their respective agents, employees, subtenants, licensees or assignees or whether caused by negligence or the conditions of the Arena or any part thereof) by way of subrogation or assignment. The BCFB hereby waives and relinquishes any such right. The BCFB shall request BCFB’s insurance carrier to endorse all applicable policies waiving the carrier’s right of recovery under subrogation or otherwise in favor of the City and provide a certificate of insurance verifying this waiver.

All insurance required by this Section shall be in a form and with companies satisfactory to City and shall provide that it shall not be subject to cancellation or change except after at least thirty (30) days' prior written notice to City. The policy or policies, or duly executed certificates for them, shall be deposited with City each year within fifteen (15) days before each Event.

7. Exemption from Liability. City shall not be liable to BCFB or to any other person whomsoever for any injury or damage to person or property occurring within or about the Arena, unless caused by or resulting from the wilful and intentional acts of the City or any of the City’s agents, servants or employees in the operation or maintenance of the Arena. City shall not be liable in damages or otherwise for failure to furnish, or any interruption of service of any water, gas, electricity, telephone, or other utility caused by fire, accident, riot, strike, labor
disputes, acts of God, the making of any repairs or improvements, or causes beyond the control of City, or for any loss, damage or theft of property of BCFB, its agents, servants or employees.

Any prevention, delay, or stoppage, due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control for the party obligated to perform shall excuse performance by such party for a equal to any such prevention, delay or stoppage, except as otherwise provided in this Agreement.

8. **Indemnification and Hold Harmless.** BCFB agrees to indemnify and hold City harmless from and against any and all claims, including mechanic's and materialman's liens, by or on behalf of any person or person, firm(s) or corporation(s), arising from the conduct or management of the activities conducted by the BCFB during the Events, or arising out of any act or omission or negligence of BCFB, its contractors, licensees, agents, servants or employees during the Events, or arising from any accident, injury, or damage whatsoever caused by any person or property occurring in or about the Arena or any part thereof, and the walkways adjoining the Arena during the Events, and from and against all costs, expenses, liabilities and attorney's fees incurred in connection with any such claim or proceeding brought thereon.

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10. **Alterations and Improvements.** BCFB shall not have the right to make changes, alterations or additions to the Arena without the prior written consent of the City, which may be withheld in the City’s sole and absolute discretion.

11. **Damage or Destruction.** If the Arena is partially or totally destroyed or damaged by fire or other casualty so as to become partially or totally untenantable, the City is not required to rebuild the Arena, in which event either the City or BCFB may terminate this Agreement by providing written notice of intent to terminate. Upon termination, BCFB waives any and all claims for damages based on termination of this Agreement and any loss of use.

12. **Defaults.** In the event BCFB shall breach BCFB’s obligations pursuant to this Agreement, then City shall notify BCFB of such breach in writing by certified mail, return receipt requested, or hand delivery, and BCFB shall correct any failure to pay rent within three (3) days of receipt of such notification, and BCFB shall cure any other breach within thirty (30) days of the date of such notification. In the event of a default which cannot, with due diligence, be cured within a period of thirty (30) days, BCFB shall have such additional time to cure the same as may be reasonably necessary, providing proceeds promptly and with due diligence to cure such default after receipt of said notice. In the event BCFB fails to pay any sums due pursuant to this Agreement, or cure any other breach, after notice as aforesaid, then City shall have the option of electing to either (i) cancel and terminate this Agreement, or (ii) terminate BCFB’s right to possession only without terminating the Agreement or (iii) pursue any other remedy available at law or in equity.

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

18. **Miscellaneous Provisions.**

a. **Final Agreement.** This Agreement represents the final agreement between the parties and merges and supersedes all prior negotiations, whether written or oral, with respect thereto.

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

c. **Time is of the Essence.** Time and timely performance is of the essence of this Agreement.

d. **Applicable Law.** This Agreement shall be construed and enforced under the laws of the State of Idaho.

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IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

Dated this _____ day of May, 2011.

CITY:

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: __________________________
Mary Cone, City Clerk

By: __________________________
Fritz X. Haemmerle, Mayor

BCFB:

BLAINE COUNTY FAIR BOARD, an Idaho non-profit corporation

___________________________
Kyle Green, its President