TO: ACHD Commissioners, Director, and Deputy Directors
FROM: Steven B. Price, General Counsel
       Scott D. Spears, Assistant General Counsel
SUBJECT: Adoption of Master License Agreement for Regulation and Control of Sidewalk, Valet Parking, and Parking Facilities in the Greater Downtown Area
UPDATED Staff Report for July 24, 2013 Commission Meeting

Executive Summary
The proposed Master License Agreement ("Agreement") (Attachment "1") replaces a (1) Master License Agreement ("Original Agreement") entered into between ACHD and Boise City on February 16, 2010 granting Boise City a limited license to regulate and control the size, placement, operation and maintenance of sidewalk structures in the public right-of-way and a (2) First Amendment and Addendum to the Original Agreement ("Original Addendum") entered into between ACHD and Boise City on June 27, 2012 to include valet parking operations.

The City desires to expand the license to include parking facilities, including vehicle detection sensors embedded into the road surface. The parties have determined that the most desirable approach to expand the license is to terminate the Original Agreement and the Original Addendum and enter into this Agreement.

The purpose of the Agreement is to comprehensively grant to Boise City a limited license to regulate and control the size, placement, operation, and maintenance of sidewalk, valet parking and parking facilities, including vehicle detection sensors, within the public rights-of-way for the purpose of ensuring the safety of patrons and visitors to the Greater Downtown Boise Area and to improve upon the aesthetics within the Greater Downtown Boise Area. The Agreement covers the same downtown area as the CCDC urban renewal district boundaries. (Exhibit "A" to Attachment "1").

Facts & Findings
License Grant. The Agreement expands the license to parking facilities, including vehicle detection sensors. The license does not impede ACHD’s exclusive jurisdiction, including ACHD’s ability to improve any rights-of-way in the Downtown Area in the future.
Maintenance. City is responsible for regulating, controlling and maintaining all sidewalk facilities, valet parking and parking facilities, including vehicle detection sensors, in the Downtown Area.

Indemnification. City has agreed to indemnify ACHD for any claims and/or damages arising from the City's regulation, control and maintenance of the all sidewalk facilities, valet parking and parking facilities, including vehicle detection sensors, in the Greater Downtown Area.

Liability Insurance. City has agreed to provide liability insurance coverage to ACHD as an additional insured to the statutory limit (currently $500,000).

Term. The initial term of the Agreement is 5 years with automatic 1-year renewal terms, unless 30-days notice. Notwithstanding, the Agreement may be terminated with 30-days notice, or ACHD may terminate with 5-days notice if Boise City fails to properly maintain the sidewalk facilities, valet parking, and parking facilities, including vehicle detection sensors.

Special Provisions. 1) The Agreement contains special provisions relating to valet parking requiring that valet parking not take place in a travel lane or interfere with motorist or pedestrian traffic. 2) Special provisions relating to parking facilities require among other things, that the City must maintain the parking facilities and spaces including painting. 3) Special provisions relating to vehicle detection sensors require among other things, that the city be solely responsible for any and all costs to repair, replace, upgrade and/or reinstall the vehicle detection sensors and that it takes full responsibility to remove any vehicle detection sensor in advance of any road work by ACHD. 4) Special Provision 8.4 would require the City to assume the responsibilities and obligations for facilities in the Greater Downtown Area contained in license agreements with VRT and CCDC in the event that such an agreement that is terminated so the City would assume the license responsibilities for those facilities.

Termination of Original Agreement and Original Addendum. The Agreement provides that the Original Agreement and the Original Addendum will terminate, with such termination to be effective upon the effective date of the Agreement.

Revisions to the Agreement as initially submitted. ACHD Staff has made the following substantive revisions to the Agreement as initially submitted to the Commission on July 16, 2013, following consideration of the edits proposed by the City on July 15, 2013:

1) Deletion of the portion of Section 7 (page 5) that would have obligated the City to spend the revenues collected from the facilities in the public right-of-way for the administration, improvement and maintenance costs within the public right-of-way. (The City requested this deletion).

2) Deletion of the portion of Section 8.2 (page 6) that would have required the City to pay ACHD the proportionate share of the cost of maintaining the road surface directly related to the parking spaces. (The City requested this deletion).

3) Revision of Section 8.4 (page 7) so that it clearly and specifically refers to the VRT and CCDC agreements and the City's assumption of license responsibilities for facilities relative to those agreements in the event those agreements are terminated. (The City had initially requested that this Section be deleted in full).

Fiscal Implications

The Agreement will reduce ACHD staff time in inspecting and otherwise regulating compliance with ACHD's sidewalk policy in the Downtown Area. ACHD will lose a limited amount of revenue in other
license fees or sidewalk café fees. Boise is entitled to keep all the revenue for sublicensing sidewalk facilities and valet parking and from its parking facilities.

Policy Implications

ACHD is granting Boise City a license to control sidewalk facilities, valet parking and parking spaces in the Downtown Area to support the City's efforts to improve the aesthetics of the area.

Recommendation

Staff is recommending the adoption and execution of the Master License Agreement.

Attachments

1. Master License Agreement w/ Exhibits
   - Exhibit “A” - Aerial Map of Greater Downtown Area Boundaries
   - Exhibit “B” - Cooperative Governmental Agreement between Valley Regional Transit and Ada County Highway District for Transit Structures
   - Exhibit “C” - Master License Agreement between Capital City Development Corporation and Ada County Highway District for Installation and Maintenance of Interlocking Pavers Within Sidewalks in the Greater Downtown Area
MASTER LICENSE AGREEMENT
FOR REGULATION AND CONTROL OF
SIDEWALK AND PARKING FACILITIES IN THE GREATER DOWNTOWN AREA

THIS MASTER LICENSE AGREEMENT FOR REGULATION AND CONTROL OF SIDEWALK AND PARKING FACILITIES IN THE GREATER DOWNTOWN AREA ("Agreement") is entered into this ___ day of July, 2013 (the "Effective Date"), by and between ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho ("ACHD") and the CITY OF BOISE, an Idaho municipal corporation ("City").

RECITALS

A. ACHD is a single county-wide highway district organized and existing under the laws of the State of Idaho, with the jurisdiction over public rights-of-way, including sidewalks, in Ada County.

B. City is a municipal corporation with police power to regulate and control encroachments and activities upon sidewalks within the city.

C. ACHD and City entered into a Master License Agreement on February 16, 2010, ("Original Agreement") in which ACHD agreed to grant City a limited license in the Greater Downtown Boise Area to regulate and control the size, placement, operation, and maintenance of all newsstands, ATM's, signs, planters, benches, fountains, fences, streetlights, sidewalk cafés, outdoor eateries, interlocking pavers, and similar commercial and public structures, objects, and other facilities on the sidewalks within the public rights-of-way located in the Greater Downtown Boise Area. On June 27, 2012, the ACHD and City entered into a First Amendment and Addendum to the Original Agreement to include valet parking operations within public rights-of-way in the Greater Downtown Boise Area. ("Original Addendum").

D. ACHD and Valley Regional Transit ("VRT") entered into a Cooperative Governmental Agreement, dated July 1, 2007 granting a limited license to construct, install, maintain, repair and control transit structures, benches, signage and other related structures and improvements in the City of Boise public right-of-way ("VRT Agreement").

E. ACHD and Capital City Development Corporation ("CCDC") entered into a Master License Agreement, dated June 21, 2013 granting a limited license to install and control the size, placement, operation and maintenance of interlocking pavers on the sidewalks within the rights-of-way in the Greater Downtown Boise Area ("CCDC Agreement").

F. On July 31, 2012, City enacted a "Downtown Valet Parking Ordinance", "Ordinance No. 6854" to regulate and control valet parking operations within and upon on-street parking areas in downtown Boise.
F. Pursuant to Idaho Code § 40-1415(8), the City has the authority to install, maintain, and remove parking meters within the City limits and also authorized to keep all revenues received thereof. In addition, the City has the authority to enforce ordinances regulating the use of parking meters.

G. Idaho Code § 67-2332 provides that public agencies may contract with one another to perform any governmental service, activity, or undertaking that each public agency entering into the contract is authorized by law to perform.

H. The parties desire by this Agreement that ACHD will grant to City a limited license to regulate and control the size, placement, operation, and maintenance of sidewalk, valet parking and parking meter facilities within the public rights-of-way for the purpose of ensuring the safety of patrons and visitors to the Greater Downtown Boise Area and to improve upon the aesthetics therein, and to set forth the purposes, powers, rights, objectives and responsibilities of each party.

I. ACHD and City desire to include other matters within a Master License Agreement between the parties and have determined that the most desirable approach is to terminate the Original Agreement and the Original Addendum and enter into this "Agreement").

J. ACHD and City hereby terminate the Original Agreement and the Original Addendum, with such termination to be effective upon the effective date of this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, which are made a part of this Agreement and not mere recitals, and for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

1. License Grant.

1.1. ACHD hereby grants a license to City ("License") within the public rights-of-way depicted on Exhibit A (collectively, the "Greater Downtown Area") to:

1.1.1. regulate and control the size, placement, operation, and maintenance of all newsstands, ATM's, signs, planters, benches, fountains, fences, streetlights, sidewalk cafés, outdoor eateries, interlocking pavers, and similar commercial and public structures, objects, and uses on the sidewalks, regardless of whether the same are or are not affixed to the ground;
1.1.2. regulate and control the size, placement, area, operation, and maintenance of any and all valet parking operations within the public rights-of-way;
1.1.3. install, maintain, and remove parking meters and facilities in the public rights-of-way;
1.1.4. maintain the necessary and/or desired landscaping and streetscaping upon sidewalks within the public rights-of-way;
1.1.5. sublicense the rights and obligations set forth herein;
1.1.6. and all the facilities listed above in sections 1.1.1. through 1.1.5. are collectively referred to as the “Facilities” for the purposes of this Agreement.

1.2. City shall have no right, title, or interest in or to the public rights-of-way other than the right to use the same pursuant to the terms and conditions of this Agreement and pursuant to the authority granted in Idaho Code.

1.3. This Agreement does not extend to City the right to use the public rights-of-way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use the public right-of-way. If the public right-of-way has been opened as a public Highway (as used in the Agreement, the term “Highway” is as defined in Idaho Code § 40-109(5)), City’s authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. City’s authorized use is also subject to the rights of holders of easements of record or obvious physical limitations upon inspection of the public right-of-way, and to the statutory rights of utilities to use the public right-of-way.

1.4. This Agreement is subject to and shall not supersede or conflict with license or rights granted under the VRT Agreement, attached hereto as Exhibit B and the license or rights granted under the CCDC Agreement, attached hereto as Exhibit C.

1.5. This Agreement is not intended to, and shall not preclude or impede (i) the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use the public right-of-way, provided that written notice is provided to the City, and such use does not unreasonably interfere with City’s rights regarding the Facilities as set forth in this Agreement and contained in Idaho Code, or (ii) the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the public right-of-way and Highways as authorized by and in accordance with state law. Where ACHD’s retained rights, as stated herein, affect the City’s authorized placement of Facilities upon the sidewalks, ACHD and City will work in good faith to resolve any conflicts.

1.6. With reference to any Facilities located in the Greater Downtown Area, ACHD will use best efforts to terminate all ACHD License Agreements for any existing Facilities in the Greater Downtown Area. During the term of this Agreement, ACHD shall not authorize, permit or license any Facilities to be located in the public right-of-way in the Greater Downtown Area.

1.7. ACHD and City agree to freely and promptly exchange information reasonably necessary to comply with the terms of this Agreement, including the provision to City, by ACHD of all records, documents, databases, or information relating to known and authorized Facilities licenses in the Greater Downtown Area, whether terminated or not.

1.8. City shall consult with representatives of ACHD to determine any traffic operations, motorist and pedestrian safety issues associated with the installation or maintenance of any Facilities.

1.9. Under no circumstances may any Facilities jeopardize motorist or pedestrian safety or interfere with or obstruct ACHD construction, maintenance or other
street improvement activities, traffic operations, or other responsibilities within ACHD's jurisdiction.

1.10. All Facilities shall be designed, constructed and maintained in accordance with generally accepted engineering practices and the prevailing standard of care in the industry.

2. Compliance with Laws; No Waste or Nuisance City, in the performance of its rights and responsibilities under this Agreement, shall (i) comply with, and shall take reasonable action to ensure that any sublicensee comply with, all applicable federal, state and local laws, ordinances, rules and regulations, including the Ada County Highway District policies and ordinances ("ACHD") and the Americans with Disabilities Act ("ADA") (collectively, "Laws") and (ii) commit no waste or allow any nuisance on the public rights-of-way in the Greater Downtown Area.

3. Maintenance and Repair. City shall be responsible for and shall regulate and control the size, placement, removal, operation, maintenance, and repair of all Facilities which it or ACHD authorizes, licenses, or sublicenses to be placed in the Greater Downtown Area, except to the extent any repairs are necessitated by damage caused by ACHD, its agents, contractors or employees during operations other than routine maintenance, road resurfacing or traffic control equipment repair or replacement, which repairs shall be the responsibility of ACHD. City agrees to keep or require the operation, maintenance, and repair of the Facilities in good repair and in compliance with all Laws. If, in ACHD's reasonable discretion, City fails to comply with its obligation herein such that a Facility poses a danger to the public or a Law is not being complied with, the same may be removed or repaired by ACHD at any time, without notice to the City and without liability for any damage to the Facility when so removed or repaired. Removal or repair of Facilities not posing a safety hazard shall require reasonable notice to the City prior to action to repair or remove on behalf of ACHD. City shall reimburse ACHD for reasonable costs associated with the removal or repair of such Facilities when such removal or repair is necessary for safety reasons or to comply with any Law.

Without limiting the City's obligation to comply with the foregoing and to reimburse certain City costs associated with the removal or repair of such Facilities, nothing contained herein shall be construed to substitute City in the place of ACHD or property owners for the construction, replacement, or reconstruction of sidewalks as may be provided for by local ordinance, law or by ACHD policy, rule, or regulation. The intent of this Agreement is to provide a master license to the City to authorize it to regulate and control the size, placement, removal, operation, and maintenance of all Facilities noted herein upon the public rights-of-way located in the Greater Downtown Area.

4. Indemnification. City will defend, indemnify and hold harmless ACHD and, as applicable, ACHD's directors, commissioners, managers, employees, contractors, agents, and representatives (collectively, "Related Parties") from and against any and all claims or actions for loss, injury, death, costs, damages, mechanics and other liens, liabilities, losses, costs or damages (collectively, "Losses"), including attorneys' fees, incurred by ACHD or its Related Parties resulting from (i) the failure or neglect of City, its agents,
contractors, employees and sublicensees (a “City Party”) to properly maintain and/or regulate the Facilities, (ii) damage to any sidewalk within any right-of-way in the Downtown Area caused by any party other than ACHD or its Related Parties, and (iii) a City Party or any Facilities user’s non-compliance with any Laws.

5. **Liability Insurance.** City shall require any of its sublicensees, to carry general liability insurance in a sum equal to the statutory limit set forth in Idaho Code § 6-926 (currently $500,000) as may be adjusted by the Idaho legislature from time to time. City agrees to provide notice to ACHD of such coverage(s), with ACHD as an additional insured, on an annual basis.

6. **Future Changes.** If, in the future, City desires to alter the physical layout of, construct improvements upon, or allow by license or sublicense, the addition of Facilities within the rights-of-way which constitute the Greater Downtown Area (“Future Changes”), all such Future Changes shall comply with Laws. If ACHD determines that a Highway on and/or adjacent to the public right-of-way in the Greater Downtown Area requires widening, realignment, redesign, improvement and/or reconstruction as would necessitate the relocation, modification or other adaptation of any Facilities, the City, or its licensee or sublicense, at its sole cost and expense, shall be responsible for relocating, modifying or otherwise adapting the affected Facilities to such widening, realignment, relocation and/or reconstruction as required by ACHD and in compliance with Laws. ACHD shall give City at least ninety (90) days prior written notice of the need for any such relocation, modification or adaptation by City. In response to such notice, City may also elect to remove an affected Facility in lieu of any such relocation, modification or adaptation.

7. **Facilities Revenue.** Throughout the term of this Agreement, City shall not be obligated to pay ACHD a fee for the authorization to use the public right-of-way.

8. **Special Provisions.**

8.1 **Valet Parking.** Under no circumstances may a valet parking operation take place in a travel lane or interfere with motorist or pedestrian traffic. ACHD shall have the right to temporarily suspend any Valet Parking Permit that interferes or obstructs traffic operations, motorist or pedestrian safety, street improvement activities, construction activities, cleaning efforts or other similar activities.

8.2 **Parking Meters.** City agrees to keep or require the operation, maintenance, and repair of the parking meters and Facilities and equipment (including necessary street and curb painting for identification of parking spaces) in good repair and in compliance with all Laws.

City shall not bill ACHD for lost parking revenue resulting from ACHD operations and permitted activities occurring within the public right-of-way including, but not limited to, construction, other improvements, maintenance, or traffic operations.
8.3 **Vehicle Detection Sensors ("VDS")**. City’s parking meters and related equipment may include VDS units installed within certain public rights-of-way.

8.3.1 City shall install any VDS within the public rights-of-way in compliance with the City’s specifications for such work, as well as all other regulations, requirements and specifications for such work adopted by City, and applicable ACHD requirements and specifications for such work, as well as applicable federal law and regulations, including but not, the Americans with Disabilities Act ("ADA") and all requirements and regulations adopted thereunder.

8.3.2 City shall be solely responsible for any and all costs associated with the installation of any VDS within the public rights-of-way.

8.3.3 City shall be solely responsible for any and all costs to operate and maintain any VDS installed within the public rights-of-way under this Agreement and for any and all costs to repair, remove, replace, upgrade and/or re-install any VDS installed within the public rights-of-way under this Agreement.

8.3.4 City acknowledges and agrees that a variety of ACHD projects, including but not limited to pavement resurfacing, will damage any VDS installed in the public rights-of-way under this Agreement. City takes full, complete and unconditional responsibility to remove any VDS installed in the public rights-of-way under this Agreement not less than 15 calendar days prior to the start of any ACHD project of which it has received notice and/or for its failure to accomplish said removal. City specifically waives any claim whatsoever against ACHD relating to the removal of, failure to remove, and/or damage to, any VDS installed in the public rights-of-way under this Agreement. To minimize impact to the resurfaced pavement, City agrees to coordinate with ACHD to re-install, at City’s sole cost and expense, any VDS which the City has removed in anticipation of an ACHD project and/or any VDS that has been damaged during an ACHD project and which the City desires to replace.

8.3.5 Except as is temporarily necessary for the accomplishment of the work itself, City’s installation, maintenance, repair, removal, replacement, upgrade and/or reinstallation and operation of any VDS shall not in any manner interfere with ACHD’s use and operation of the public rights-of-way or any ACHD signal facilities associated with said public rights-of-way.

8.4 **Other Agreements**. In the event that either the VRT Agreement or the CCDC Agreement is terminated, City shall assume all responsibilities and obligations for the Facilities covered by such Agreement.
9. **Term of Agreement.** The initial term of this Agreement commences on the Effective Date and shall continue in effect for a period of five years (the "**Initial Term**"). The Initial Term automatically will be extended for successive one-year periods (each a "**Renewal Term**") unless either party notifies the other at least 30 days before the expiration of the Initial Term or any Renewal Term, as the case may be, that it does not wish to extend the Agreement. The Initial Term and any Renewal Terms are collectively referred to as the "**Term**." Notwithstanding the foregoing, this Agreement may be terminated (i) by either party upon 30 days written notice or (ii) by ACHD upon 5 days notice to City, if in ACHD’s reasonable discretion City has failed to allocate sufficient resources and/or funds to ensure the Facilities are properly maintained.

10. **Waiver and Estoppel.** City acknowledges and agrees that the authorized use granted herein is temporary, non-transferable (subject to Section 13.3), and merely a permissive use of the public right-of-way pursuant to this Agreement. City further acknowledges and agrees that it specifically assumes the risk that the access right that is granted pursuant to this Agreement may be terminated as provided herein before City has realized the economic benefit of the cost of installing, constructing, repairing, maintaining, or authorizing any use of the Facilities, and City hereby waives and is estopped from asserting any claim that this Agreement is in any way irrevocable because City has expended funds on the Facilities and this Agreement has not been in effect for a period sufficient for City to realize the economic benefit from such expenditures. Any and all costs and expenses associated with City’s use of the public right-of-way, or the repair and maintenance of the Facilities, shall be at the sole cost and expense of City except as otherwise provided herein.

11. **Default.** Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) days period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

12. **Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, riots, flood, earthquakes, fire or other casualty, the elements or acts of God, or other causes, other than financial, beyond a party’s reasonable control.

13. **Third Party Construction.** If, as a result of any construction, improvement, repair or maintenance by or caused by a third party (such as, by way of example and not limitation, third party new construction or third party relocation of sewer or utility lines), it is determined by ACHD that relocation, modification or other adaptation of any of the Facilities will be required, ACHD shall require that the third party, at such third party’s
sole cost and expense, be responsible for such relocation, modification or other adaptation, as ACHD deems to be appropriate under the circumstances.

14. **Good Faith and Cooperation.** It is agreed by ACHD and City that it is in their mutual best interest and the interest of the public that the Facilities be located within the public right-of-way as herein contemplated, and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

15. **Miscellaneous**

15.1 **Authority.** The parties hereby warrant that the person executing this Agreement on behalf of each party is, at the time of its execution, duly authorized to do so by its governing body, and is fully vested with the authority to bind that party in all respects.

15.2 **Severability.** If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.

15.3 **Assignment.** Either party shall be entitled to assign this Agreement to an entity which is either statutorily authorized to be its successor or is an entity controlled by the assigning party, provided that such assignee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained. Otherwise, neither party shall be entitled to sell, assign or otherwise transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent will not be granted unless such, assignee or transferee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained.

15.4 **Representation and Warranty.** City warrants and represents that its codes and ordinances do not conflict with the terms of this Agreement.

15.5 **Further Assurances.** Each Party shall cooperate fully with the others and execute such further instruments, documents and agreements and give such further written assurances, as may be reasonably requested by the others to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

15.6 **Captions and Headings.** The captions and headings in this Agreement are solely for reference purposes, and shall not affect the interpretation of any provision of this Agreement.

15.7 **Third Parties.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.
15.8 Successors and Assigns. The terms and conditions hereof shall be binding upon and inure to the benefit of the respective parties, their administrators, executors, successors and assigns.

15.9 Attorney Fees. Should either party find it necessary to employ an attorney for representation in any action seeking enforcement of any of the provisions of this Agreement, to recover damages for the breach of this Agreement, to resolve any disagreement in interpretation of this Agreement, or to obtain assistance in any litigation, the unsuccessful party in any final judgment or award entered therein shall reimburse the prevailing party for all reasonable costs, charges and expenses, including attorneys’ fees expended or incurred by the prevailing party in connection therewith and in connection with any appeal, and the same may be included in such judgment or award.

15.10 Choice of Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho.

15.11 Exhibits. All exhibits to this Agreement are incorporated by reference and made a part of this Agreement as if the exhibits were set forth in their entirety in this Agreement.

15.12 Entire Agreement. This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the transaction contemplated herein, and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

15.13 Acknowledgments and Modifications. No acknowledgments required hereunder, and no modification or waiver of any provision of this Agreement or consent to departure therefrom, shall be effective unless in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.
City of Boise

____________________________________
David H. Bieter
Mayor

ATTEST:

____________________________________
Jade Riley
Ex-Officio City Clerk

ACHD:

ADA COUNTY HIGHWAY DISTRICT

By: __________________________________
Its: __________________________________

EXHIBITS

Exhibit A  Aerial Map of Greater Downtown Area Boundaries
Exhibit B  VRT Agreement
Exhibit C  CCDC Agreement
EXHIBIT A

(Aerial Map of Greater Boise Downtown Area)
EXHIBIT B
(VRT Agreement)
MANAGEMENT COMMITTEE RESOLUTION

COOPERATIVE AGREEMENT WITH ACHD – TRANSIT STRUCTURES
INSTALLATION AND MAINTENANCE OF A BUS STOP SYSTEM IN THE BOISE SERVICE AREA
RESOLUTION VMC07-004

BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT, WE DO HEREBY APPROVE VALLEY REGIONAL TRANSIT TO ENTER INTO THE COOPERATIVE AGREEMENT WITH ACHD TO PROVIDE AUTHORITY TO VALLEY REGIONAL TRANSIT FOR THE INSTALLATION AND MAINTENANCE OF A BUS STOP SYSTEM IN THE BOISE SERVICE AREA:

WHEREAS, pursuant to Idaho Code, Chapter 21, Title 40, and as a result of the approval of the voters of Ada and Canyon Counties on November 3, 1998, a regional public transportation authority (now known as “Valley Regional Transit”) was created to serve Ada and Canyon counties; and

WHEREAS, Idaho Code § 40-2109(1) confers to Valley Regional Transit, as a regional public transportation entity, exclusive jurisdiction over all publicly funded or publicly subsidized transportation services and programs except those transportation services and programs under the jurisdiction of public school districts and law enforcement agencies within Ada and Canyon Counties; and

WHEREAS, ACHD is the single county-wide highway district in and for Ada County, Idaho, created pursuant to Idaho Code, Chapter 14, Title 40; and

WHEREAS, the parties desire by this Agreement that ACHD grant to VRT the right to construct, install, maintain, repair and control transit shelters, benches, signage and other related structures (collectively, the “Transit Structures”) in ACHD rights-of-way for the purpose of enhancing VRT’s transportation services and programs, pursuant to the terms and conditions as set forth in the attached agreement Exhibit 1; and

WHEREAS, Idaho Code § 40-2109(7) provides that Valley Regional Transit may enter into cooperative agreements with other authorities under the provisions of Idaho Code 67-2328; and

WHEREAS, Idaho Code § 67-2328 expressly authorizes public agencies to enter into agreements with one another for cooperative action for purposes within the power, privilege, or authority of said agencies; and

WHEREAS, Idaho Code § 40-2108(2) and (5) provide that Valley Regional Transit, as a regional public transportation entity has power to raise and expend funds as provided in Idaho Code Chapter 21, Title 40 and to make contracts as may be necessary or convenient for the purposes of the Regional Public Transportation Authority Act; and
WHEREAS, Idaho Code § 40-2109(5) provides that the Board of Valley Regional Transit may adopt resolutions consistent with law, as necessary, for carrying out the purposes of Chapter 21, Title 40, Idaho Code and discharging all powers and duties conferred to ValleyRide Pursuant to Chapter 21, Title 40.

WHEREAS, the Board of Valley Regional Transit has created a Management Committee, conferring specific authority upon it to discharge its powers, pursuant to Resolution 2003-002; and

WHEREAS, the Board of Valley Regional Transit on May 23, 2005, delegated the authority to the Management Committee to finalize the Cooperative Agreement with ACHD to provide authority to Valley Regional Transit for the installation and maintenance of a bus stop system in the Boise service area (Resolution VBD05-014).

NOW THEREFORE, BE IT RESOLVED BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT:

Section 1. That the Management Committee authorizes the VRT Board Chair to sign, on behalf of the Valley Regional Transit Board, the Cooperative Agreement with ACHD for transit structures – Exhibit 1.

Section 2. That this resolution shall be in full force and effective immediately upon its adoption by the Management Committee of Valley Regional Transit and its approval by the Committee Chair.

ADOPTED by the Management Committee of Valley Regional Transit, this 18th day of June, 2007.

APPROVED by the Committee Chair this 16th day of July, 2007.

ATTEST:  

SECRETARY

APPROVED:

CHAIR OF MANAGEMENT COMMITTEE
COOPERATIVE GOVERNMENTAL AGREEMENT
BETWEEN
VALLEY REGIONAL TRANSIT
AND
ADA COUNTY HIGHWAY DISTRICT
FOR
TRANSIT STRUCTURES

THIS COOPERATIVE GOVERNMENTAL AGREEMENT ("Agreement") is
entered into this 1st day of July, 2007, by and between VALLEY REGIONAL TRANSIT,
the regional public transportation authority ("VRT") and ADA COUNTY HIGHWAY
DISTRICT, a public body, corporate and politic ("ACHD").

RECITALS

A. VRT is the regional public transportation authority created to serve Ada
and Canyon Counties, pursuant to Chapter 21, Title 40, Idaho Code, and as a result of
the November 3, 1998 public referendum. VRT provides publicly funded or publicly
subsidized public transportation services and programs in Ada and Canyon Counties.

B. ACHD is the single countywide highway district in and for Ada County,
Idaho created pursuant to Idaho Code, Chapter 14, Title 40, and has exclusive
jurisdiction over the public right-of-way.

C. ACHD is dedicated to reducing traffic congestion and improving air quality
by providing alternative public transportation and entering into cooperative agreements
with VRT.

D. Idaho Code § 40-2109(7) provides that VRT may enter into cooperative
agreements with the state, other authorities, counties, cities and highway districts under
the provisions of Idaho Code § 67-2328, which expressly authorizes public agencies to
enter into agreements with one another for cooperative action for purposes within the
power, privilege, or authority of said agencies.

E. VRT desires by this Agreement that ACHD grant to VRT the limited right
to construct, install, maintain, repair and control transit shelters, benches, signage and
other related structures and improvements (collectively, the "Transit Structures") in the
public right-of-way for the purpose of enhancing VRT’s public transportation services
and programs, pursuant to the terms and conditions as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of foregoing recitals, which are made a
part of this Agreement and not mere recitals, and for other good and valuable
consideration, the receipt and sufficiency of which are hereby acknowledged, it is
mutually agreed as follows:

ACHD hereby (i) agrees that VRT may construct, install, maintain, repair and control all Transit Structures located or to be located, from time to time, at the various stops on VRT’s established and operating public transit routes, in such locations within the public right-of-way as prior approved by ACHD in writing in accordance with this Agreement, and (ii) grants to VRT, its agents, contractors and employees, the right to access and enter such public right-of-way for all purposes reasonably related thereto. Such Transit Structures must have a reasonable and operational nexus to the public transit system. This Agreement does not extend to VRT the right to use the public right-of-way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use the public right-of-way. If the public right-of-way has been opened as a public Highway (as used in the Agreement, the term “Highway” is as defined in Idaho Code § 40-109(5)), VRT’s authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. VRT’s authorized use is also subject to the rights of holders of easements of record or obvious physical limitations upon inspection of the public right-of-way, and to the statutory rights of utilities to use the public right-of-way. This Agreement it is not intended to, and shall not preclude or impede (i) the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use the public right-of-way, provided that such use does not unreasonably interfere with VRT’s rights regarding the Transit Structures as set forth in this Agreement, or (ii) the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the public right-of-way and Highways as authorized by law. ACHD agrees during the term of this Agreement not to allow any bus benches within the public right-of-way without the prior consent of VRT; provided, however, that with respect to those certain bus benches owned by third parties that are located within the public right-of-way and are subject to ACHD License Agreements (the “Licensed Bus Benches”), notwithstanding anything to the contrary elsewhere in this Agreement, the following provisions shall apply:

(a) With reference to any Licensed Bus Benches located within Boise City, ACHD will terminate all ACHD License Agreements for such benches based upon Boise City’s ordinance that will cause such ACHD License Agreements to be invalid.

(b) For any Licensed Bus Benches located outside of Boise City (or other underlying jurisdiction without an ordinance that would cause the ACHD License Agreements for such benches to be invalid), the ACHD License Agreements for such benches will remain in full force and effect unless ACHD, in its sole discretion, determines to terminate such ACHD License Agreements. Should ACHD determine to terminate any such ACHD License Agreements for any such benches, following notice of such termination from ACHD and the failure of the third party to remove the bench, VRT may remove the benches if determined appropriate by VRT. Either party may, but shall have no obligation to, remove any such benches.

If VRT determines to discontinue use of any structures in the public right-of-way for its system, VRT agrees to discontinue and remove such structures from the public right-of-way within ninety (90) days of such determination of non-use. VRT’s right of access to the public right-of-way is limited to structures owned by VRT and used for its bus transit system.
2. Maintenance and Repair.

VRT shall be responsible for all maintenance and repair of all Transit Structures placed by VRT in the public right-of-way, except to the extent any repairs are necessitated by damage caused by ACHD, its agents, contractors or employees, which repairs shall be the responsibility of ACHD. The installation or construction of Transit Structures by VRT shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, ACHD policies and good engineering practices. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Transit Structures, and the responsibility and liability therefor shall be and remain in VRT. Subject to the foregoing, VRT agrees to keep all such Transit Structures in good repair. As determined by the outside consultant retained by the parties pursuant to this Agreement, VRT shall make all ADA required pedestrian access improvements as are directly attributable to the Transit Structures, including, without limitation, construction of pedestrian ramps and/or truncated domes. ACHD shall be responsible for all other ADA compliance requirements that are not directly attributable to the Transit Structures.

3. Fee. Throughout the term of this Agreement, VRT shall not be obligated to pay ACHD a fee for the authorization to use the public right-of-way, but shall reimburse ACHD for all authorized out-of-pocket or consulting expenses incurred as a result of this Agreement.

4. No Title. VRT shall have no right, title, or interest in or to the public right-of-way other than the right to use the same pursuant to the terms and conditions of this Agreement.

5. Consultant Safety and Feasibility Study. It is expressly agreed that the grant of rights in Section 1 shall be subject to the completion and review of an initial study by an outside engineering consultant mutually acceptable to both ACHD and VRT (the “Initial Consultant”) to determine whether it is safe, legal, and otherwise feasible (“Safety Review”) to install the Transit Structures at the locations in the public right-of-way as proposed by VRT. VRT shall pay the Initial Consultant’s costs associated with this initial study (except for the amount of $4,961.14, which shall be paid by ACHD in reimbursement to VRT for services paid by VRT to ACHD for bus stop data collection in fiscal year 2005). ACHD and VRT shall agree upon the scope of services to be provided by the Initial Consultant. The contract with the Initial Consultant shall be a three-party contract between the Initial Consultant, ACHD and VRT and shall be entered into pursuant to such bidding procedures and requirements as are compatible with the needs of both ACHD and VRT, and if the contract has been determined by both ACHD and VRT to be economically feasible (the “Initial Consultant Contract”). It is acknowledged and agreed that since VRT will responsible for all payments under the Initial Consultant Contract, and since VRT’s major funding source for same will be federal funds, the bidding procedures and requirements for VRT shall include any applicable federal funding requirements.
6. Future Route Changes. If, in the future, VRT proposes any change in or addition to its transit routes that would require a change or addition to the location of any Transit Structures within the public right-of-way, such change or addition shall be subject to (i) the written approval of ACHD as set forth in Section 1 and (ii) a subsequent Safety Review by an outside consultant, on a case by case basis, with the cost thereof paid by VRT. Such subsequent Safety Review shall be conducted either by the Initial Consultant under the Initial Consultant Contract (provided that the Consultant Contract has anticipated the same and has established the cost thereof) or by an outside consultant mutually acceptable to both ACHD and VRT (which may include the Initial Consultant) and chosen pursuant to the same terms as set forth in Section 5.

7. Advertising and Advertising Revenue; Location of Transit Structures.

7.1 Advertising. Advertising allowed by VRT to be displayed upon the Transit Structures shall be in compliance with all applicable state, county and local laws and regulations. All revenue generated from the display of advertising on any Transit Structure shall belong to VRT.

7.2 Location. VRT shall be entitled to locate its Transit Structures only within the public right-of-way as permitted under this Agreement, and shall remove, at its sole cost and expense, any of its Transit Structures, if any there be, as may be located elsewhere in the public right-of-way. Subject to the provisions set forth in Section 1, to the degree that any Transit Structures owned by other parties are subject to ACHD License Agreements, upon its execution hereof, ACHD shall either terminate or not renew any such ACHD License Agreements and shall direct such other parties to immediately remove their Transit Structures. During the term of this Agreement, ACHD shall not authorize, permit or license any Transit Structures to be located within the public right-of-way except for VRT Transit Structures and, as more specifically set forth in Section 17.3, shall cooperate with VRT and governmental authorities with jurisdiction regarding enforcement of applicable regulations concerning unauthorized Transit Structures in the public right-of-way. In any of the locations that VRT is permitted to locate its Transit Structures, VRT may remove, at its sole cost and expense, any Transit Structures placed by there by other parties.

8. Relocation of Improvements. ACHD utilizes an annually updated five-year work plan process with respect to the widening, realignment, redesign, improvement and/or reconstruction of Highways. On a regular basis, ACHD shall advise VRT of any anticipated widening, realignment, redesign, improvement and/or reconstruction of Highways as would be likely to cause a relocation, modification or other adaptation of any of VRT's Transit Structures, and the parties, to the extent reasonably possible, shall agree to a priority schedule regarding same. The parties intend that this enable the parties to cooperate with respect to planning and coordination as related to any such relocation, modification or other adaptation of any VRT Transit Structure. If ACHD ultimately determines that a Highway on and/or adjacent to the public right-of-way requires such widening, realignment, redesign, improvement and/or reconstruction as would necessitate the relocation, modification or other adaptation of any VRT Transit Structure, VRT, at its sole cost and expense, shall
be responsible for relocating, modifying or otherwise adapting the affected Transit Structure to such widening, realignment, relocation and/or reconstruction as required by ACHD, which shall be accomplished by VRT according to designs, plans and specifications prior approved by ACHD in writing. Any such relocation, modification or adaptation shall be subject to the provisions of Section 6, essentially the same as if it were a change in location thereunder. ACHD shall give VRT at least ninety (90) days prior written notice of the need for any such relocation, modification or adaptation by VRT. In response to such notice, VRT may also elect to remove an affected Transit Structure in lieu of any such relocation, modification or adaptation.

9. Term of Agreement. The term of this Agreement shall be for an initial term of ten (10) years from the date of full execution of this Agreement, with automatic renewals for successive periods of ten (10) years each; provided, however, that either party, upon at least one hundred eighty (180) days prior written notice to the other, shall be entitled to earlier terminate this Agreement. VRT, at any time, shall be entitled, upon written notice to ACHD, to remove any Transit Structure from the public right-of-way and vacate such location. Any such individual removal shall not terminate this Agreement. VRT, at any time, shall also be entitled, upon written notice, to remove all of its Transit Structures from the public right-of-way, and upon such removal this Agreement shall earlier terminate. This Agreement may also be earlier terminated as otherwise specifically provided herein. Subject to the foregoing, upon termination of this Agreement, neither party shall have further recourse hereunder except with respect to liabilities incurred prior to such termination, except as set forth in Section 10.

10. Termination Obligations.

Unless otherwise agreed in writing between ACHD and VRT, upon termination of this Agreement, VRT will promptly remove (if not already removed) all its Transit Structures and restore the public right-of-way to at least a condition comparable to that which existed when the Transit Structures were installed, normal wear and tear excepted. Should VRT fail to remove and restore as aforesaid, such failure shall be grounds for declaration of a default pursuant to Section 13. Following expiration of the notice and cure period under Section 13, and the continuing default of VRT with respect to such removal and restoration, VRT shall have no further right, title or interest in and to any remaining Transit Structure, and ACHD shall be entitled to (i) complete the removal and restoration and VRT shall reimburse ACHD for its reasonable out of pocket expenses actually paid in completing the same, or (ii) at the option of ACHD, to assume ownership of all or any part of the Transit Structures not removed. If VRT has installed any landscaping or irrigation in connection with its Transit Structures, VRT shall not be required to remove the same upon termination of this Agreement if a third party is under a continuing obligation to maintain and repair same.

If ACHD earlier terminates this Agreement for any reason other than the default of VRT, ACHD shall pay VRT an amount equal to one-half (1/2) of the amounts that would be assessed by the Federal Transportation Authority (“FTA”) against VRT for the early termination of this Agreement assuming a useful life of 10 years for all Transit Structures. Additionally, ACHD shall repay VRT any sums assessed by FTA for any
concrete pads remaining on the public right-of-way that have not been completely amortized. If this Agreement is terminated by ACHD because of the default of VRT, however, ACHD shall not be obligated to pay any amounts under the two immediately preceding sentences.

11. **Waiver and Estoppel Statement.** VRT acknowledges and agrees that the authorized use granted herein is temporary, non-transferable (subject to Section 18.7), and merely a permissive use of the public right-of-way pursuant to this Agreement. VRT further acknowledges and agrees that it specifically assumes the risk that the access right that is granted pursuant to this Agreement may be terminated as provided herein before VRT has realized the economic benefit of the cost of installing, constructing, repairing, or maintaining the Transit Structures, and VRT hereby waives and is estopped from asserting any claim that this Agreement is in any way irrevocable because VRT has expended funds on the Transit Structures and this Agreement has not been in effect for a period sufficient for VRT to realize the economic benefit from such expenditures, other than agreed to be paid by ACHD as set forth in Section 10. Any and all costs and expenses associated with VRT’s use of the public right-of-way, or the repair and maintenance of the Transit Structures, shall be at the sole cost and expense of VRT except as otherwise provided herein.

12. **Compliance With Law; No Waste or Nuisance.** In connection with VRT’s use of the public right-of-way, throughout the term of this Agreement VRT covenants and agrees to (i) comply with and observe in all respects any and all applicable federal, state and local statutes, ordinances, policies, rules and regulations, and (ii) commit no waste or allow any nuisance on the public-right-of-way.

13. **Default.** Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) days period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

14. **Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, riots, flood, earthquakes, fire or other casualty, the elements or acts of God, or other causes, other than financial, beyond a party’s reasonable control.

15. **Indemnification.** VRT hereby indemnifies and holds ACHD harmless from and against any and all claims or actions for loss, injury, death, damages, mechanics, and other liens, arising out of the failure or neglect of VRT, its agents, contractors and employees to properly and reasonably make authorized use of the public right-of-way or properly repair or maintain the improvements thereon, or that otherwise result from the use and occupation of the public right-of-way or it Transit
Structures by VRT, and including any attorney fees and costs that may be incurred by ACHD in defense of such claims or actions indemnified against by VRT hereunder, except to the extent caused by the willful or grossly negligent act or omission of ACHD, its agents, contractors or employees.

16. Liability Insurance. VRT agrees to carry liability insurance in a sum equal to the statutory limit set forth in Idaho Code § 6-926 (currently $500,000) as may be adjusted by the Idaho legislature from time to time. VRT agrees to provide notice to ACHD of such coverage, with ACHD as an additional insured, on an annual basis.


17.1 Third Party Construction. If, as a result of any construction, improvement, repair or maintenance by or caused by a third party (such as, by way of example and not limitation, third party new construction or third party relocation of sewer or utility lines), it is determined by ACHD that relocation, modification or other adaptation of any of VRT’s Transit Structure will be required, ACHD, to the extent permitted under its statutory authority, shall require that the third party, at such third party’s sole cost and expense, be responsible for such relocation, modification or other adaptation, as is appropriate under the circumstances.

17.2 Good Faith and Cooperation. It is agreed by ACHD and VRT that it is in their mutual best interest and the interest of the public that the Transit Structures be located within the public right-of-way as herein contemplated, and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

17.3 Regulation and Enforcement. ACHD and VRT acknowledge and agree that regulation and enforcement regarding signs, benches, advertising and related issues are matters within the underlying jurisdiction and control of the cities and/or counties in which the Transit Structures are located. ACHD will cooperate with any other jurisdictions in Ada County enacting sign ordinances.

18. Miscellaneous.

18.1 Authority. The parties hereby warrant that the person executing this Agreement on behalf of each party is, at the time of its execution, duly authorized to do so by its governing body, and is fully vested with the authority to bind that party in all respects.

18.2 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.

18.3 Entire Agreement. Except as provided otherwise herein, this Agreement and any attachments hereto constitute the entire Agreement between VRT and ACHD concerning the subject matter hereof.
18.4 Further Assurances. Each Party shall cooperate fully with the other and execute such further instruments, documents and agreements and give such further written assurances, as may be reasonably requested by the other to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

18.5 Captions and Headings. The captions and headings in this Agreement are solely for reference purposes, and shall not affect the interpretation of any provision of this Agreement.

18.6 Third Parties. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

18.7 Assignment. Either party shall be entitled to assign this Agreement to an entity which is either statutorily authorized to be its successor or is an entity controlled by the assigning party, provided that such assignee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained. Otherwise, neither party shall be entitled to sell, assign or otherwise transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent will not be granted unless such purchaser, assignee or transferee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained.

18.8 Attorney Fees and Costs. In any suit, action or appeal there from to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

18.9 Successors and Assigns. The terms and conditions hereof shall be binding upon and inure to the benefit of the respective parties, their administrators, executors, successors and assigns.

18.10 Survival. The terms, covenants and conditions set forth herein shall survive the termination of this Agreement.

18.11 FTA Rules and Regulations. FTA rules and regulations in effect at the time of the execution of this Agreement shall control the interpretation and implementation of this Agreement throughout the term of the Agreement. Any Transit Structures purchased with FTA funds shall be used only as permitted under said FTA rules and regulations.

18.12 Constitutional Debt Limitation. Nothing in this Agreement shall be construed to obligate either party to any indebtedness or liability, in any manner, or for any purpose that would be in violation of the yearly debt limitation imposed by Article VIII, Section 3 of the Idaho Constitution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.
VRT:
VALLEY REGIONAL TRANSIT
By: [Signature]
Its: Chair of Board

ACHD:
ADA COUNTY HIGHWAY DISTRICT
By: [Signature]
Its: President of Board
EXHIBIT C
(CCDC Agreement)
MASTER LICENSE AGREEMENT
FOR INSTALLATION AND MAINTENANCE OF INTERLOCKING PAVERS
WITHIN SIDEWALKS IN THE GREATER DOWNTOWN AREA

THIS MASTER LICENSE AGREEMENT FOR INSTALLATION AND
MAINTENANCE OF INTERLOCKING PAVERS WITHIN SIDEWALKS IN THE
GREATER DOWNTOWN AREA ("Agreement") is entered into this 15th day of
JUNE, 2013 ("Effective Date"), by and between ADA COUNTY HIGHWAY
DISTRICT, a body politic and corporate of the State of Idaho ("ACHD") and the
CAPITAL CITY DEVELOPMENT CORPORATION, an independent public body
corporate and politic of the State of Idaho ("CCDC").

RECITALS

A. ACHD is a single county-wide highway district organized and existing
under the laws of the State of Idaho, with the jurisdiction over public rights-of-way,
including sidewalks, in Ada County.

B. CCDC is an urban renewal agency organized and existing under the laws
of the State of Idaho, with power to undertake and carry out urban renewal projects and
related activities within its area of operation.

C. ACHD and Valley Regional Transit ("VRT") entered into a Cooperative
Governmental Agreement, dated July 1, 2007, granting a limited, non-exclusive license
to construct, install, maintain, repair and control transit structures, benches, signage and
other related structures and improvements in the City of Boise public right-of-way
("VRT Agreement").

D. ACHD and the City of Boise ("City") entered into (i) a Master License
Agreement for Regulation and Maintenance of Sidewalk Facilities in the Greater
Downtown Area, dated February 16, 2010, granting a limited, non-exclusive license to
regulate and control the size, placement, operation and maintenance of all newstands,
ATM’s, signs, planters, benches, fountains, fences, streetlights, sidewalk cafes, outdoor
eateries and similar commercial and public structures, objects and uses on the sidewalks
within the surface of certain City of Boise public rights-of-way, and (ii) a First
Amendment and Addendum to Master License Agreement for Regulation and
Maintenance of Sidewalk Facilities in the Greater Downtown Area, dated June 27, 2012,
additionally granting a limited, non-exclusive license to regulate and control the size,
placement, area, operation and maintenance of all valet parking operations upon and
within certain City of Boise public rights-of-way (collectively, "City Agreement").

E. Idaho Code § 67-2332 provides that public agencies may contract with
one another to perform any governmental service, activity, or undertaking that each
public agency entering into the contract is authorized by law to perform.

F. The parties desire by this Agreement that ACHD will grant to CCDC a
limited, non-exclusive license to install and control the size, placement, operation and
maintenance of brick pavers within ACHD sidewalks for the purpose of ensuring the safety of patrons and visitors to downtown Boise and to improve upon the aesthetics therein, and to set forth the purposes, powers, rights, objectives and responsibilities of each party.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are made a part of this Agreement and not mere recitals, and for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually agreed as follows:

I. License Grant. ACHD hereby grants a license to CCDC ("License") to install and control the size, placement, operation and maintenance of interlocking pavers, regardless of whether the same are composed of clay, concrete, stone or other suitable materials (collectively, "Pavers"), on the sidewalks within the surface of the public rights-of-way depicted on Exhibit A (collectively, "Greater Downtown Area"). CCDC shall have no right, title or interest in or to the public rights-of-way other than the right to use the same pursuant to the terms and conditions of this Agreement and pursuant to the authority granted in the Idaho Code. This Agreement does not extend to CCDC the right to use the public rights-of-way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use the public rights-of-way. If the public right-of-way has been opened as a public Highway (as used herein, the term "Highway" is as defined in Idaho Code § 40-109(5)), CCDC's authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. CCDC’s authorized use is also subject to the rights of holders of easements of record or obvious physical limitations upon inspection of the public right-of-way, and to the statutory rights of utilities to use the public right-of-way. This Agreement is subject to and shall not supersede or conflict with license or rights granted under the VRT Agreement, attached hereto as Exhibit B, or the City Agreement, attached hereto as Exhibit C. This Agreement is not intended to, and shall not preclude or impede (i) the ability of ACHD to enter into other similar agreements in the future allowing other third parties to also use the public right-of-way, provided that written notice is provided to CCDC and that such use does not unreasonably interfere with CCDC’s rights set forth in this Agreement and contained in Idaho Code, or (ii) the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the public right-of-way and Highways as authorized by and in accordance with state law. Where ACHD’s retained rights, as stated herein, affect CCDC’s authorized placement of Pavers within the sidewalks, CCDC will work in good faith to resolve any conflicts.

   a. CCDC agrees to freely and promptly exchange information reasonably necessary to comply with the terms of this Agreement.
   b. CCDC shall consult with representatives of ACHD to determine any traffic operations, motorist and pedestrian safety issues associated with the installation or maintenance of any Pavers.
   c. Under no circumstances may Pavers interfere with or obstruct ACHD traffic operations, motorist or pedestrian safety, street improvement activities, construction activities, cleaning efforts or other similar activities.
d. All Pavers shall be designed, constructed and maintained in accordance with generally accepted engineering practices and the prevailing standard of care in the industry.

2. **Compliance with Laws; No Waste or Nuisance** CCDC, in the performance of its rights and responsibilities under this Agreement, shall (i) comply with all applicable federal, state and local laws, ordinances, rules and regulations, including ACHD policies and ordinances and the Americans with Disabilities Act ("ADA"), as amended from time to time (collectively, "Laws"); and (ii) commit no waste or allow any nuisance on the public rights-of-way in the Greater Downtown Area.

3. **Maintenance and Repair.** CCDC shall be responsible for and shall control the size, placement, removal, operation, maintenance and repair of all Pavers which it causes to be placed in the Greater Downtown Area, except to the extent any repairs are necessitated by damage caused by ACHD, its agents, contractors or employees, which repairs shall be the responsibility of ACHD. CCDC agrees to keep or require the operation, maintenance and repair of the Pavers in good repair and in compliance with all Laws. If, in ACHD’s discretion, CCDC fails to comply with its obligation herein such that certain Pavers pose a danger to the public or a Law is not being complied with, the same may be removed or repaired by ACHD at any time and may be replaced with concrete or other hard scape, without notice to CCDC and without liability for any damage to the Pavers when so removed or repaired. CCDC shall reimburse ACHD for all actual costs associated with the removal or repair of such Pavers and the installation of any hard scape replacement. Removal or repair of Pavers not posing a safety hazard shall require reasonable notice to CCDC prior to action to repair or remove on behalf of ACHD.

Without limiting CCDC’s obligation to comply with the foregoing and to reimburse ACHD for certain costs associated with the removal or repair of such Pavers, nothing contained herein shall be construed to substitute CCDC in the place of ACHD or property owners for the construction, replacement or reconstruction of sidewalks as may be provided in the Laws. The intent of this Agreement is to provide a license to CCDC authorizing it to install and control the size, placement, removal, operation and maintenance of Pavers as noted herein upon the public rights-of-way located in the Greater Downtown Area. Nothing herein shall conflict with the licensed uses set forth in the VRT Agreement and the City Agreement, and CCDC must coordinate any work in the public rights-of-way with those entities.

4. **Indemnification.** CCDC will defend, indemnify and hold harmless ACHD and, as applicable, ACHD’s directors, commissioners, managers, employees, contractors, agents and representatives (collectively, "Related Parties") from and against any and all claims or actions for loss, injury, death, costs, damages, mechanics and other liens, liabilities, losses, costs or damages (collectively, "Losses"), including attorneys’ fees, incurred by ACHD or its Related Parties resulting from (i) the failure or neglect of CCDC, its agents, contractors, employees and sublicensees (collectively or individually, "CCDC Party") to properly maintain and/or regulate the Pavers; (ii) damage to any
sidewalk within any right-of-way in the Downtown Area caused by a CCDC Party; and (iii) a CCDC Party’s non-compliance with any Laws.

5. Liability Insurance. CCDC shall carry general liability insurance covering personal injuries or property damage occurring on property within the right of way in the Greater Downtown Area where CCDC has installed Pavers in a sum equal to the statutory limit set forth in Idaho Code § 6-926 (currently $500,000), as may be adjusted by the Idaho legislature from time to time. CCDC agrees to provide notice to ACHD of such coverage(s), with ACHD as an additional insured, on an annual basis.

6. Future Changes. If, in the future, CCDC desires to alter the physical layout of or allow the addition of Pavers to the sidewalks within the rights-of-way which constitute the Greater Downtown Area (“Future Changes”), all such Future Changes shall comply with Laws. If ACHD determines that a Highway on and/or adjacent to the public right-of-way in the Greater Downtown Area requires widening, realignment, redesign, improvement and/or reconstruction as would necessitate the relocation, modification or other adaptation of any Pavers, CCDC, at its sole cost and expense, shall be responsible for relocating, modifying or otherwise adapting the affected Pavers to such widening, realignment, relocation and/or reconstruction as required by ACHD and in compliance with Laws. ACHD shall give CCDC at least ninety (90) days’ prior written notice of the need for any such relocation, modification or adaptation by CCDC. In response to such notice, CCDC may also elect to remove affected Pavers in lieu of any such relocation, modification or adaptation.

7. Licensing Fee. Throughout the term of this Agreement, CCDC shall not be obligated to pay ACHD a fee for the authorization to use the public right-of-way as set forth herein.

8. Term of Agreement. The initial term of this Agreement commences on the Effective Date and shall continue in effect for a period of five years (“Initial Term”). The Initial Term automatically will be extended for successive one-year periods (each a “Renewal Term”) unless either party notifies the other at least thirty (30) days before the expiration of the Initial Term or any Renewal Term, as the case may be, that it does not wish to extend the Agreement. The Initial Term and any Renewal Terms are collectively referred to as the “Term.” Notwithstanding the foregoing, this Agreement may be terminated (i) by either party upon thirty (30) days’ written notice or (ii) by ACHD upon five (5) days’ notice to CCDC if, in ACHD’s discretion, CCDC has failed to allocate sufficient resources and/or funds to ensure the Pavers are properly maintained or to timely repair Pavers representing a hazard to motorist or pedestrian safety.

Upon termination of this Agreement, ACHD may elect to remove any and all Pavers and to replace the same with concrete or other hardscape at the sole cost and expense of CCDC.

9. Waiver and Estoppel. CCDC acknowledges and agrees that the authorized use granted herein is temporary, non-transferable (subject to Section 13.3) and merely a
permissive use of the public right-of-way pursuant to this Agreement. CCDC further acknowledges and agrees that it specifically assumes the risk that the right that is granted pursuant to this Agreement may be terminated as provided herein before CCDC has realized the economic benefit of the cost of installing, constructing, repairing or maintaining the Pavers, and CCDC hereby waives and is estopped from asserting any claim that this Agreement is in any way irrevocable because CCDC has expended funds on the Pavers and this Agreement has not been in effect for a period sufficient for CCDC to realize the economic benefit from such expenditures. Any and all costs and expenses associated with CCDC’s use of the public right-of-way, or the repair, maintenance and removal of the Pavers, shall be at the sole cost and expense of CCDC.

10. **Default.** Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) days period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

11. **Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, riots, flood, earthquakes, fire or other casualty, the elements or acts of God or other causes, other than financial, beyond a party’s reasonable control.

12. **Third Party Construction.** If, as a result of any construction, improvement, repair or maintenance by or caused by a third party (such as, by way of example and not limitation, third party new construction or third party relocation of sewer or utility lines), it is determined by ACHD that relocation, modification or other adaptation of any of the Pavers will be required, ACHD shall require that the third party, at such third party’s sole cost and expense, be responsible for such relocation, modification or other adaptation, as ACHD deems to be appropriate under the circumstances.

13. **Miscellaneous**

13.1 **Authority.** The parties hereby warrant that the person executing this Agreement on behalf of each party is, at the time of its execution, duly authorized to do so by its governing body and is fully vested with the authority to bind that party in all respects.

13.2 **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.
13.3 **Assignment.** Either party shall be entitled to assign this Agreement to an entity which is either statutorily authorized to be its successor or is an entity controlled by the assigning party, provided that such assignee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained. Otherwise, neither party shall be entitled to sell, assign or otherwise transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent will not be granted unless such assignee or transferee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained.

13.4 **Further Assurances.** Each party shall cooperate fully with the other and execute such further instruments, documents and agreements and give such further written assurances as may be reasonably requested by the other to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

13.5 **Captions and Headings.** The captions and headings in this Agreement are solely for reference purposes, and shall not affect the interpretation of any provision of this Agreement.

13.6 **Third Parties.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

13.7 **Successors and Assigns.** The terms and conditions hereof shall be binding upon and inure to the benefit of the respective parties, their administrators, executors, successors and assigns.

13.8 **Attorney Fees.** Should either party find it necessary to employ an attorney for representation in any action seeking enforcement of any of the provisions of this Agreement, to recover damages for the breach of this Agreement, to resolve any disagreement in interpretation of this Agreement or to obtain assistance in any litigation, the unsuccessful party in any final judgment or award entered therein shall reimburse the prevailing party for all reasonable costs, charges and expenses, including attorneys' fees, expended or incurred by the prevailing party in connection therewith and in connection with any appeal, and the same may be included in such judgment or award.

13.9 **Choice of Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Idaho.

13.10 **Exhibits.** All exhibits to this Agreement are incorporated by reference and made a part of this Agreement as if the exhibits were set forth in their entirety in this Agreement.

13.11 **Entire Agreement.** This Agreement and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the transaction contemplated herein, and no party shall be liable or bound to any other in any
manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

13.12 Acknowledgments and Modifications. No acknowledgments required hereunder, and no modification or waiver of any provision of this Agreement or consent to departure therefrom, shall be effective unless in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CCDC:

CAPITAL CITY DEVELOPMENT CORPORATION

[Signature]

Chair, Board of Commissioners

Sec./Treas.

ATTEST:

[Signature]

By: John Brunelle

Its: Executive Director

ACHD:

ADA COUNTY HIGHWAY DISTRICT

[Signature]

By: Bruce S. Wong

Its: Executive Director
EXHIBITS

Exhibit A    Aerial Map of Greater Downtown Area Boundaries
Exhibit B    VRT Agreement
Exhibit C    City Agreement
EXHIBIT A
(Aerial Map of Greater Boise Downtown Area)
EXHIBIT B
(VRT Agreement)
MANAGEMENT COMMITTEE RESOLUTION

COOPERATIVE AGREEMENT WITH ACHD – TRANSIT STRUCTURES
INSTALLATION AND MAINTENANCE OF A BUS STOP SYSTEM IN THE BOISE SERVICE AREA
RESOLUTION VMC07-004

BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT, WE DO
HEREBY APPROVE VALLEY REGIONAL TRANSIT TO ENTER INTO THE
COOPERATIVE AGREEMENT WITH ACHD TO PROVIDE AUTHORITY TO VALLEY
REGIONAL TRANSIT FOR THE INSTALLATION AND MAINTENANCE OF A BUS STOP SYSTEM IN THE BOISE SERVICE AREA:

WHEREAS, pursuant to Idaho Code, Chapter 21, Title 40, and as a result of the approval of the voters of Ada and Canyon Counties on November 3, 1998, a regional public transportation authority (now known as “Valley Regional Transit”) was created to serve Ada and Canyon counties; and

WHEREAS, Idaho Code § 40-2109(1) confers to Valley Regional Transit, as a regional public transportation entity, exclusive jurisdiction over all publicly funded or publicly subsidized transportation services and programs except those transportation services and programs under the jurisdiction of public school districts and law enforcement agencies within Ada and Canyon Counties; and

WHEREAS, ACHD is the single county-wide highway district in and for Ada County, Idaho, created pursuant to Idaho Code, Chapter 14, Title 40; and

WHEREAS, the parties desire by this Agreement that ACHD grant to VRT the right to construct, install, maintain, repair and control transit shelters, benches, signage and other related structures (collectively, the “Transit Structures”) in ACHD rights-of-way for the purpose of enhancing VRT’s transportation services and programs, pursuant to the terms and conditions as set forth in the attached agreement Exhibit 1; and

WHEREAS, Idaho Code § 40-2109(7) provides that Valley Regional Transit may enter into cooperative agreements with other authorities under the provisions of Idaho Code 67-2328; and

WHEREAS, Idaho Code § 67-2328 expressly authorizes public agencies to enter into agreements with one another for cooperative action for purposes within the power, privilege, or authority of said agencies; and

WHEREAS, Idaho Code § 40-2108(2) and (5) provide that Valley Regional Transit, as a regional public transportation entity has power to raise and expend funds as provided in Idaho Code Chapter 21, Title 40 and to make contracts as may be necessary or convenient for the purposes of the Regional Public Transportation Authority Act; and

VMC07-004
WHEREAS, Idaho Code § 40-2109(5) provides that the Board of Valley Regional Transit may adopt resolutions consistent with law, as necessary, for carrying out the purposes of Chapter 21, Title 40, Idaho Code and discharging all powers and duties conferred to ValleyRide Pursuant to Chapter 21, Title 40.

WHEREAS, the Board of Valley Regional Transit has created a Management Committee, conferring specific authority upon it to discharge its powers, pursuant to Resolution 2003-002; and

WHEREAS, the Board of Valley Regional Transit on May 23, 2005, delegated the authority to the Management Committee to finalize the Cooperative Agreement with ACHD to provide authority to Valley Regional Transit for the installation and maintenance of a bus stop system in the Boise service area (Resolution VBD05-014).

NOW THEREFORE, BE IT RESOLVED BY THE MANAGEMENT COMMITTEE OF VALLEY REGIONAL TRANSIT:

Section 1. That the Management Committee authorizes the VRT Board Chair to sign, on behalf of the Valley Regional Transit Board, the Cooperative Agreement with ACHD for transit structures – Exhibit 1.

Section 2. That this resolution shall be in full force and effective immediately upon its adoption by the Management Committee of Valley Regional Transit and its approval by the Committee Chair.

ADOPTED by the Management Committee of Valley Regional Transit, this 18th day of June, 2007.

APPROVED by the Committee Chair this 16th day of July, 2007.

ATTEST:

APPROVED:

SECRETARY

CHAIR OF MANAGEMENT COMMITTEE
COOPERATIVE GOVERNMENTAL AGREEMENT
BETWEEN
VALLEY REGIONAL TRANSIT
AND
ADA COUNTY HIGHWAY DISTRICT
FOR
TRANSIT STRUCTURES

THIS COOPERATIVE GOVERNMENTAL AGREEMENT ("Agreement") is entered into this 1st day of July, 2007, by and between VALLEY REGIONAL TRANSIT, the regional public transportation authority ("VRT") and ADA COUNTY HIGHWAY DISTRICT, a public body, corporate and politic ("ACHD").

RECITALS

A. VRT is the regional public transportation authority created to serve Ada and Canyon Counties, pursuant to Chapter 21, Title 40, Idaho Code, and as a result of the November 3, 1998 public referendum. VRT provides publicly funded or publicly subsidized public transportation services and programs in Ada and Canyon Counties.

B. ACHD is the single countywide highway district in and for Ada County, Idaho created pursuant to Idaho Code, Chapter 14, Title 40, and has exclusive jurisdiction over the public right-of-way.

C. ACHD is dedicated to reducing traffic congestion and improving air quality by providing alternative public transportation and entering into cooperative agreements with VRT.

D. Idaho Code § 40-2109(7) provides that VRT may enter into cooperative agreements with the state, other authorities, counties, cities and highway districts under the provisions of Idaho Code § 67-2328, which expressly authorizes public agencies to enter into agreements with one another for cooperative action for purposes within the power, privilege, or authority of said agencies.

E. VRT desires by this Agreement that ACHD grant to VRT the limited right to construct, install, maintain, repair and control transit shelters, benches, signage and other related structures and improvements (collectively, the "Transit Structures") in the public right-of-way for the purpose of enhancing VRT's public transportation services and programs, pursuant to the terms and conditions as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of foregoing recitals, which are made a part of this Agreement and not mere recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ACHD hereby (i) agrees that VRT may construct, install, maintain, repair and control all Transit Structures located or to be located, from time to time, at the various stops on VRT’s established and operating public transit routes, in such locations within the public right-of-way as prior approved by ACHD in writing in accordance with this Agreement, and (ii) grants to VRT, it agents, contractors and employees, the right to access and enter such public right-of-way for all purposes reasonably related thereto. Such Transit Structures must have a reasonable and operational nexus to the public transit system. This Agreement does not extend to VRT the right to use the public right-of-way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use the public right-of-way. If the public right-of-way has been opened as a public Highway (as used in the Agreement, the term “Highway” is as defined in Idaho Code § 40-109(5)), VRT’s authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. VRT’s authorized use is also subject to the rights of holders of easements of record or obvious physical limitations upon inspection of the public right-of-way, and to the statutory rights of utilities to use the public right-of-way. This Agreement it is not intended to, and shall not preclude or impede (i) the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use the public right-of-way, provided that such use does not unreasonably interfere with VRT’s rights regarding the Transit Structures as set forth in this Agreement, or (ii) the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the public right-of-way and Highways as authorized by law. ACHD agrees during the term of this Agreement not to allow any bus benches within the public right-of-way without the prior consent of VRT; provided, however, that with respect to those certain bus benches owned by third parties that are located within the public right-of-way and are subject to ACHD License Agreements (the “Licensed Bus Benches”), notwithstanding anything to the contrary elsewhere in this Agreement, the following provisions shall apply:

(a) With reference to any Licensed Bus Benches located within Boise City, ACHD will terminate all ACHD License Agreements for such benches based upon Boise City’s ordinance that will cause such ACHD License Agreements to be invalid.

(b) For any Licensed Bus Benches located outside of Boise City (or other underlying jurisdiction without an ordinance that would cause the ACHD License Agreements for such benches to be invalid), the ACHD License Agreements for such benches will remain in full force and effect unless ACHD, in its sole discretion, determines to terminate such ACHD License Agreements. Should ACHD determine to terminate any such ACHD License Agreements for any such benches, following notice of such termination from ACHD and the failure of the third party to remove the bench, VRT may remove the benches if determined appropriate by VRT. Either party may, but shall have no obligation to, remove any such benches.

If VRT determines to discontinue use of any structures in the public right-of-way for its system, VRT agrees to discontinue and remove such structures from the public right-of-way within ninety (90) days of such determination of non-use. VRT’s right of access to the public right-of-way is limited to structures owned by VRT and used for its bus transit system.
2. **Maintenance and Repair.**

VRT shall be responsible for all maintenance and repair of all Transit Structures placed by VRT in the public right-of-way, except to the extent any repairs are necessitated by damage caused by ACHD, its agents, contractors or employees, which repairs shall be the responsibility of ACHD. The installation or construction of Transit Structures by VRT shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, ACHD policies and good engineering practices. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Transit Structures, and the responsibility and liability therefor shall be and remain in VRT. Subject to the foregoing, VRT agrees to keep all such Transit Structures in good repair. As determined by the outside consultant retained by the parties pursuant to this Agreement, VRT shall make all ADA required pedestrian access improvements as are directly attributable to the Transit Structures, including, without limitation, construction of pedestrian ramps and/or truncated domes. ACHD shall be responsible for all other ADA compliance requirements that are not directly attributable to the Transit Structures.

3. **Fee.** Throughout the term of this Agreement, VRT shall not be obligated to pay ACHD a fee for the authorization to use the public right-of-way, but shall reimburse ACHD for all authorized out-of-pocket or consulting expenses incurred as a result of this Agreement.

4. **No Title.** VRT shall have no right, title, or interest in or to the public right-of-way other than the right to use the same pursuant to the terms and conditions of this Agreement.

5. **Consultant Safety and Feasibility Study.** It is expressly agreed that the grant of rights in Section 1 shall be subject to the completion and review of an initial study by an outside engineering consultant mutually acceptable to both ACHD and VRT (the "Initial Consultant") to determine whether it is safe, legal, and otherwise feasible ("Safety Review") to install the Transit Structures at the locations in the public right-of-way as proposed by VRT. VRT shall pay the Initial Consultant's costs associated with this initial study (except for the amount of $4,961.14, which shall be paid by ACHD in reimbursement to VRT for services paid by VRT to ACHD for bus stop data collection in fiscal year 2005). ACHD and VRT shall agree upon the scope of services to be provided by the Initial Consultant. The contract with the Initial Consultant shall be a three-party contract between the Initial Consultant, ACHD and VRT and shall be entered into pursuant to such bidding procedures and requirements as are compatible with the needs of both ACHD and VRT, and if the contract has been determined by both ACHD and VRT to be economically feasible (the "Initial Consultant Contract"). It is acknowledged and agreed that since VRT will responsible for all payments under the Initial Consultant Contract, and since VRT's major funding source for same will be federal funds, the bidding procedures and requirements for VRT shall include any applicable federal funding requirements.
6. **Future Route Changes.** If, in the future, VRT proposes any change in or addition to its transit routes that would require a change or addition to the location of any Transit Structures within the public right-of-way, such change or addition shall be subject to (i) the written approval of ACHD as set forth in Section 1 and (ii) a subsequent Safety Review by an outside consultant, on a case by case basis, with the cost thereof paid by VRT. Such subsequent Safety Review shall be conducted either by the Initial Consultant under the Initial Consultant Contract (provided that the Consultant Contract has anticipated the same and has established the cost thereof) or by an outside consultant mutually acceptable to both ACHD and VRT (which may include the Initial Consultant) and chosen pursuant to the same terms as set forth in Section 5.

7. **Advertising and Advertising Revenue; Location of Transit Structures.**

7.1 Advertising. Advertising allowed by VRT to be displayed upon the Transit Structures shall be in compliance with all applicable state, county and local laws and regulations. All revenue generated from the display of advertising on any Transit Structure shall belong to VRT.

7.2 Location. VRT shall be entitled to locate its Transit Structures only within the public right-of-way as permitted under this Agreement, and shall remove, at its sole cost and expense, any of its Transit Structures, if any there be, as may be located elsewhere in the public right-of-way. Subject to the provisions set forth in Section 1, to the degree that any Transit Structures owned by other parties are subject to ACHD License Agreements, upon its execution hereof, ACHD shall either terminate or not renew any such ACHD License Agreements and shall direct such other parties to immediately remove their Transit Structures. During the term of this Agreement, ACHD shall not authorize, permit or license any Transit Structures to be located within the public right-of-way except for VRT Transit Structures and, as more specifically set forth in Section 17.3, shall cooperate with VRT and governmental authorities with jurisdiction regarding enforcement of applicable regulations concerning unauthorized Transit Structures in the public right-of-way. In any of the locations that VRT is permitted to locate its Transit Structures, VRT may remove, at its sole cost and expense, any Transit Structures placed by there by other parties.

8. **Relocation of Improvements.** ACHD utilizes an annually updated five-year work plan process with respect to the widening, realignment, redesign, improvement and/or reconstruction of Highways. On a regular basis, ACHD shall advise VRT of any anticipated widening, realignment, redesign, improvement and/or reconstruction of Highways as would be likely to cause a relocation, modification or other adaptation of any of VRT’s Transit Structures, and the parties, to the extent reasonably possible, shall agree to a priority schedule regarding same. The parties intend that this enable the parties to cooperate with respect to planning and coordination as related to any such relocation, modification or other adaptation of any VRT Transit Structure. If ACHD ultimately determines that a Highway on and/or adjacent to the public right-of-way requires such widening, realignment, redesign, improvement and/or reconstruction as would necessitate the relocation, modification or other adaptation of any VRT Transit Structure, VRT, at its sole cost and expense, shall
be responsible for relocating, modifying or otherwise adapting the affected Transit Structure to such widening, realignment, relocation and/or reconstruction as required by ACHD, which shall be accomplished by VRT according to designs, plans and specifications prior approved by ACHD in writing. Any such relocation, modification or adaptation shall be subject to the provisions of Section 6, essentially the same as if it were a change in location thereunder. ACHD shall give VRT at least ninety (90) days prior written notice of the need for any such relocation, modification or adaptation by VRT. In response to such notice, VRT may also elect to remove an affected Transit Structure in lieu of any such relocation, modification or adaptation.

9. Term of Agreement. The term of this Agreement shall be for an initial term of ten (10) years from the date of full execution of this Agreement, with automatic renewals for successive periods of ten (10) years each; provided, however, that either party, upon at least one hundred eighty (180) days prior written notice to the other, shall be entitled to earlier terminate this Agreement. VRT, at any time, shall be entitled, upon written notice to ACHD, to remove any Transit Structure from the public right-of-way and vacate such location. Any such individual removal shall not terminate this Agreement. VRT, at any time, shall also be entitled, upon written notice, to remove all of its Transit Structures from the public right-of-way, and upon such removal this Agreement shall earlier terminate. This Agreement may also be earlier terminated as otherwise specifically provided herein. Subject to the foregoing, upon termination of this Agreement, neither party shall have further recourse hereunder except with respect to liabilities incurred prior to such termination, except as set forth in Section 10.

10. Termination Obligations.

Unless otherwise agreed in writing between ACHD and VRT, upon termination of this Agreement, VRT will promptly remove (if not already removed) all its Transit Structures and restore the public right-of-way to at least a condition comparable to that which existed when the Transit Structures were installed, normal wear and tear excepted. Should VRT fail to remove and restore as aforesaid, such failure shall be grounds for declaration of a default pursuant to Section 13. Following expiration of the notice and cure period under Section 13, and the continuing default of VRT with respect to such removal and restoration, VRT shall have no further right, title or interest in and to any remaining Transit Structure, and ACHD shall be entitled to (i) complete the removal and restoration and VRT shall reimburse ACHD for its reasonable out of pocket expenses actually paid in completing the same, or (ii) at the option of ACHD, to assume ownership of all or any part of the Transit Structures not removed. If VRT has installed any landscaping or irrigation in connection with its Transit Structures, VRT shall not be required to remove the same upon termination of this Agreement if a third party is under a continuing obligation to maintain and repair same.

If ACHD earlier terminates this Agreement for any reason other than the default of VRT, ACHD shall pay VRT an amount equal to one-half (1/2) of the amounts that would be assessed by the Federal Transportation Authority ("FTA") against VRT for the early termination of this Agreement assuming a useful life of 10 years for all Transit Structures. Additionally, ACHD shall repay VRT any sums assessed by FTA for any
concrete pads remaining on the public right-of-way that have not been completely amortized. If this Agreement is terminated by ACHD because of the default of VRT, however, ACHD shall not be obligated to pay any amounts under the two immediately preceding sentences.

11. Waiver and Estoppel Statement. VRT acknowledges and agrees that the authorized use granted herein is temporary, non-transferable (subject to Section 18.7), and merely a permissive use of the public right-of-way pursuant to this Agreement. VRT further acknowledges and agrees that it specifically assumes the risk that the access right that is granted pursuant to this Agreement may be terminated as provided herein before VRT has realized the economic benefit of the cost of installing, constructing, repairing, or maintaining the Transit Structures, and VRT hereby waives and is estopped from asserting any claim that this Agreement is in any way irrevocable because VRT has expended funds on the Transit Structures and this Agreement has not been in effect for a period sufficient for VRT to realize the economic benefit from such expenditures, other than agreed to be paid by ACHD as set forth in Section 10. Any and all costs and expenses associated with VRT’s use of the public right-of-way, or the repair and maintenance of the Transit Structures, shall be at the sole cost and expense of VRT except as otherwise provided herein.

12. Compliance With Law; No Waste or Nuisance. In connection with VRT’s use of the public right-of-way, throughout the term of this Agreement VRT covenants and agrees to (i) comply with and observe in all respects any and all applicable federal, state and local statutes, ordinances, policies, rules and regulations, and (ii) commit no waste or allow any nuisance on the public-right-of-way.

13. Default. Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) days period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

14. Force Majeure. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, riots, flood, earthquakes, fire or other casualty, the elements or acts of God, or other causes, other than financial, beyond a party’s reasonable control.

15. Indemnification. VRT hereby indemnifies and holds ACHD harmless from and against any and all claims or actions for loss, injury, death, damages, mechanics, and other liens, arising out of the failure or neglect of VRT, its agents, contractors and employees to properly and reasonably make authorized use of the public right-of-way or properly repair or maintain the improvements thereon, or that otherwise result from the use and occupation of the public right-of-way or if Transit
Structures by VRT, and including any attorney fees and costs that may be incurred by ACHD in defense of such claims or actions indemnified against by VRT hereunder, except to the extent caused by the willful or grossly negligent act or omission of ACHD, its agents, contractors or employees.

16. Liability Insurance. VRT agrees to carry liability insurance in a sum equal to the statutory limit set forth in Idaho Code § 6-926 (currently $500,000) as may be adjusted by the Idaho legislature from time to time. VRT agrees to provide notice to ACHD of such coverage, with ACHD as an additional insured, on an annual basis.


17.1 Third Party Construction. If, as a result of any construction, improvement, repair or maintenance by or caused by a third party (such as, by way of example and not limitation, third party new construction or third party relocation of sewer or utility lines), it is determined by ACHD that relocation, modification or other adaptation of any of VRT's Transit Structure will be required, ACHD, to the extent permitted under its statutory authority, shall require that the third party, at such third party's sole cost and expense, be responsible for such relocation, modification or other adaptation, as is appropriate under the circumstances.

17.2 Good Faith and Cooperation. It is agreed by ACHD and VRT that it is in their mutual best interest and the interest of the public that the Transit Structures be located within the public right-of-way as herein contemplated, and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

17.3 Regulation and Enforcement. ACHD and VRT acknowledge and agree that regulation and enforcement regarding signs, benches, advertising and related issues are matters within the underlying jurisdiction and control of the cities and/or counties in which the Transit Structures are located. ACHD will cooperate with any other jurisdictions in Ada County enacting sign ordinances.

18. Miscellaneous.

18.1 Authority. The parties hereby warrant that the person executing this Agreement on behalf of each party is, at the time of its execution, duly authorized to do so by its governing body, and is fully vested with the authority to bind that party in all respects.

18.2 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.

18.3 Entire Agreement. Except as provided otherwise herein, this Agreement and any attachments hereto constitute the entire Agreement between VRT and ACHD concerning the subject matter hereof.
18.4 Further Assurances. Each Party shall cooperate fully with the other and execute such further instruments, documents and agreements and give such further written assurances, as may be reasonably requested by the other to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

18.5 Captions and Headings. The captions and headings in this Agreement are solely for reference purposes, and shall not affect the interpretation of any provision of this Agreement.

18.6 Third Parties. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

18.7 Assignment. Either party shall be entitled to assign this Agreement to an entity which is either statutorily authorized to be its successor or is an entity controlled by the assigning party, provided that such assignee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained. Otherwise, neither party shall be entitled to sell, assign or otherwise transfer this Agreement or any of its rights hereunder without the prior written consent of the other party, which consent will not be granted unless such purchaser, assignee or transferee assumes all the obligations, warranties, covenants and agreements of the assigning party herein contained.

18.8 Attorney Fees and Costs. In any suit, action or appeal there from to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

18.9 Successors and Assigns. The terms and conditions hereof shall be binding upon and inure to the benefit of the respective parties; their administrators, executors, successors and assigns.

18.10 Survival. The terms, covenants and conditions set forth herein shall survive the termination of this Agreement.

18.11 FTA Rules and Regulations. FTA rules and regulations in effect at the time of the execution of this Agreement shall control the interpretation and implementation of this Agreement throughout the term of the Agreement. Any Transit Structures purchased with FTA funds shall be used only as permitted under said FTA rules and regulations.

18.12 Constitutional Debt Limitation. Nothing in this Agreement shall be construed to obligate either party to any indebtedness or liability, in any manner, or for any purpose that would be in violation of the yearly debt limitation imposed by Article VIII, Section 3 of the Idaho Constitution.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.
VRT:
VALLEY REGIONAL TRANSIT
By: [Signature]
Its: Chair of Board

ACHD:
ADA COUNTY HIGHWAY DISTRICT
By: [Signature]
Its: President of Board
FIRST AMENDMENT AND ADDENDUM TO
MASTER LICENSE AGREEMENT FOR REGULATION AND MAINTENANCE
OF
SIDEWALK FACILITIES IN THE GREATER DOWNTOWN AREA

THIS FIRST AMENDMENT AND ADDENDUM TO THE MASTER LICENSE AGREEMENT is entered into this 27 day of June, 2012, by and between ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho ("ACHD") and the CITY OF BOISE, an Idaho municipal corporation ("City").

RECITALS

A. ACHD is a single county-wide highway district organized and existing under the laws of the State of Idaho, with the exclusive jurisdiction over public rights-of-way, including sidewalks, in Ada County; City is a municipal corporation with police power to regulate and control encroachments and activities upon sidewalks within the city.

B. Idaho Code § 67-2332 provides that public agencies may contract with one another to perform any governmental service, activity, or undertaking that each public agency entering into the contract is authorized by law to perform.

C. The parties entered into a Master License Agreement in February 16, 2010, in which ACHD agreed to grant to City a limited license to regulate and control the size, placement, operation, and maintenance of movable and non-movable structures and objects upon ACHD pedestrian rights-of-way and sidewalks.

D. City seeks to promulgate and establish a "Valet Parking Ordinance" to regulate and control valet parking operations within and upon on-street public parking areas in downtown Boise, and therefore the parties agree herein to amend the Master License Agreement for the specific purpose of an additional grant of authority under the Master License Agreement allowing the City to regulate, control, and authorize valet parking operations in the Greater Downtown Boise Area.

E. ACHD and City desire to amend and add to the terms and conditions of the Master License Agreement to additionally grant the City a license to regulate and control the size, placement, area, operation, and maintenance of any and all valet parking operations within the public rights-of-way located in the Greater Downtown Area.
AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are made a part of this Agreement and not mere recitals, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereto agree as follows:

That Section 1 of the Master License Agreement be amended to provide an additional sentence to grant City additional license rights, such that the Section shall read, as amended:

Section 1. License Grant. ACHD hereby grants a license to City ("License") to (i) regulate and control the size, placement, operation and maintenance of all newstands, ATM's, signs, planters, benches, fountains, fences, streetlights, sidewalk cafés, outdoor eateries, and similar commercial and public structures, objects, and uses, regardless of whether the same are or are not affixed to the ground (collectively, the "Facilities") on the sidewalks within the surface of the public rights-of-way depicted on Exhibit A (collectively, the "Greater Downtown Area"), (ii) provide for and maintain the necessary and/or desired landscaping and streetscaping upon sidewalks within the public rights-of-way for the Greater Downtown Area, and (iii) sublicense the rights and obligations set forth in (i) and (ii). ACHD additionally grants to City a license to regulate and control the size, placement, area, operation, and maintenance of any and all valet parking operations within the same Greater Downtown Area upon and within on-street public parking spaces which are public rights-of-way. City shall have no right, title, or interest in or to the public rights-of-way other than the right to use the same pursuant to the terms and conditions of this Agreement and pursuant to the authority granted in the Idaho Code. This Agreement does not extend to City the right to use the public rights-of-way to the exclusion of ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use the public right-of-way. If the public right-of-way has been opened as a public Highway (as used in the Agreement, the term "Highway" is as defined in Idaho Code § 40-109(5)), City's authorized use is subject to the rights of the public to use the right-of-way for Highway purposes. City's authorized use is also subject to the rights of holders of easements of record or obvious physical limitations upon inspection of the public right-of-way, and to the statutory rights of utilities to use the public right-of-way. This Agreement is subject to and shall not supersede or conflict with license or rights granted under the VRT Agreement, attached hereto as Exhibit B. This Agreement is not intended to, and shall not preclude or impede (i) the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use the public right-of-way, provided that written notice is provided to the City, and such use does not unreasonably interfere with City's rights regarding the Facilities as set forth in this Agreement and contained in Idaho Code, or (ii) the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the public right-of-way and Highways as authorized by and in accordance with state law. Where ACHD's retained rights, as stated herein, affect the City's authorized placement of Facilities upon the sidewalks, ACHD and City will work in good faith to resolve any conflicts.

FIRST AMENDMENT AND ADDENDUM TO MASTER LICENSE AGREEMENT FOR REGULATION AND MAINTENANCE OF SIDEWALK FACILITIES IN THE GREATER DOWNTOWN AREA - 2
a. With reference to any Facilities located in the Greater Downtown Area, ACHD will use best efforts to terminate all ACHD License Agreements for any existing Facilities in the Greater Downtown Area. During the term of this Agreement, ACHD shall not authorize, permit or license any Facilities to be located in the public right-of-way in the Greater Downtown Area, except for underground structures.

b. ACHD and City agree to freely and promptly exchange information reasonably necessary to comply with the terms of this Agreement, including the provision to City, by ACHD of all records, documents, databases, or information relating to known and authorized Facilities licenses in the Greater Downtown Area, whether terminated or not.

That additional terms be provided by Addendum to the Master License Agreement to include the following:

2. Valet Parking License. Boise City shall consult with representatives of the ACHD to determine any traffic operations, motorist and traffic safety issues associated with any permit application. Under no circumstances may a valet parking operation take place in a travel lane or interfere with motorist or pedestrian traffic. ACHD shall have the right to temporarily suspend any Valet Parking Permit that interferes or obstructs traffic operations, motorist or pedestrian safety, street improvement activities, construction activities, cleaning efforts or other similar activities.

3. Waiver. This Addendum shall not be construed as an amendment or waiver of any of City's obligations under the Master License Agreement, except as specifically set forth herein. No failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of the Master License Agreement or this Addendum or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term, or condition. No waiver shall be binding unless executed in writing by the party making the waiver. Without limiting the foregoing, ACHD in no way waives any claims.

4. Amendment and Restatement of Agreement. The provisions of this Addendum shall be incorporated into the Master License Agreement, which is hereby amended and restated in full. All provisions of the Master License Agreement shall remain the same except as specifically set forth herein. In the event of any conflict between the terms of the Master License Agreement and this Addendum, this Addendum shall control.

5. Entire Addendum. The Master License Agreement and this Addendum and the exhibits hereto constitute the full and entire understanding and agreement between the parties with regard to the license contemplated herein, and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

6. Recitals Incorporated by Reference. The Recitals of this Addendum are incorporated by this reference into this Addendum.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CITY OF BOISE

[Signature]
David H. Bieter
Mayor

ATTEST:

[Signature]
Jamie Heinzerling
Deputy City Clerk

ACHI

ADA COUNTY HIGHWAY DISTRICT

[Signature]
Rebecca W. Arnold
By: President

ATTEST:

Bruce S. Wong
Director

FIRST AMENDMENT AND ADDENDUM TO MASTER LICENSE AGREEMENT FOR REGULATION AND MAINTENANCE OF SIDEWALK FACILITIES IN THE GREATER DOWNTOWN AREA - 4