May 31, 2016

TO: ACHD Board of Commissioners & Bruce S. Wong, Director

FROM: Justin Fredin, Staff Attorney

SUBJECT: License Agreement with City of Boise – Parking at 15th and River
Staff Report for June 8, 2016 Commission Meeting

Executive Summary

The Legal Department has drafted the attached License Agreement, which authorizes the City of Boise to install and maintain public parking within a portion of ACHD’s right-of-way at the corner of 15th Street and River Street, as depicted on the exhibits to the agreement. The proposed parking is intended to reduce or eliminate on-street parking associated with Rhodes Skate Park, but it will be open to all members of the public.

Our license agreements typically contemplate that designs, plans and specifications for improvements will be submitted to and reviewed by ACHD at a later date. In this case, the City would like Exhibit B of the agreement (depicting the proposed parking stalls) to be approved concurrently with the agreement.

The City of Boise approved and signed this agreement on May 17th.

Fiscal Implications

None.

Recommendation

Staff recommends that the Commission approve the agreement and authorize its execution by President Goldthorpe and Director Wong.

Attachment(s): License Agreement
PROPERTY MANAGEMENT

Property Management No. _____ - _____ - _____
Street: T _____, R _____, S _____

_________________________________________________________

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into this 17th day of May, 2016 (the "Effective Date"), by and between the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the State of Idaho, hereinafter referred to as "ACHD", and the city of BOISE CITY, by and through its Department of Parks and Recreation, a municipal corporation of the state of Idaho, hereinafter referred to as "Licensee." Together, ACHD and Licensee may be referred to as the "Parties" and each separately as a "Party."

WITNESSETH:

For good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties:

SECTION 1. RECITALS.

1.1 ACHD owns and has exclusive jurisdiction over the public right-of-way (the "Right-of-Way") located in Ada County, Idaho, including that portion of Right-of-Way generally located at the corner of 15th and River Street, which is more particularly depicted on Exhibit 1A and Exhibit 1B attached hereto and referred to hereinafter as the "Public Parking Area."

1.2 Licensee desires a license to use a portion of the Right-of-Way for the limited purposes hereinafter set forth, and, for the consideration and on the terms and conditions hereinafter set forth, ACHD is willing to grant such license to Licensee.

SECTION 2. LICENSE; LICENSE NOT EXCLUSIVE.

2.1 On the terms and conditions hereinafter set forth, ACHD hereby grants to Licensee a license on, over, across and under a portion of the Right-of-Way for the following uses and purposes ("Authorized Use") and no others:

Installation, maintenance, repair, and use of the Right-of-Way for temporary public parking for patrons and users of Rhodes Skate Park as depicted on Exhibit B.

2.2 This Agreement does not extend to Licensee the right to use the 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 a public right-of-way. If the Public Parking Area has been opened as a public Highway (as used in the Agreement the term "Highway" is as defined in Idaho Code § 40-109(5)) Licensee’s Authorized Use is subject to the rights of the public to use the Right-of-Way for Highway purposes. Licensee’s Authorized Use is also subject to the rights of holders of easements of record or obvious on inspection of the Public Parking Area and statutory rights of utilities to use the public right-of-way. This Agreement is not intended to, and shall not, preclude or impede the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use its public rights-of-way, or the ability of ACHD to redesign, reconstruct, relocate, maintain and improve its public rights-of-way and Highways as authorized by law and as it determines, in its sole discretion, is appropriate.

SECTION 3. CONSTRUCTION, INSTALLATION OF IMPROVEMENTS. Any installation or construction of improvements, including basic landscaping elements, painted parking stalls, and signage by Licensee, or any repair or maintenance of Licensee’s improvements made to the Public Parking Area (collectively, the “Improvements”) on, over, across and under the Public Parking Area shall be accomplished in accordance with the designs, plans and specifications attached hereto as Exhibit B and incorporated herein by this reference, which designs, plans and specifications are hereby approved by ACHD. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Improvements, and the responsibility therefor shall be and remain with Licensee. Prior to making any changes to the attached designs, plans and specifications, Licensee shall obtain ACHD’s advance written approval of such changes.

3.1 At its sole cost and expense, Licensee may paint lines on the surface within the Public Parking Area to designate parking spaces, and Licensee shall be authorized to install signs designating allowed parking uses, hours of operation, and parking time limits. All such installation and construction shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD.

3.2 Licensee shall limit parking within the Public Parking Area to the designated and lined parking stalls. Only privately-owned automobiles and light (pickup) trucks shall be allowed to utilize the Public Parking Area. Licensee shall not allow commercial vehicles or vehicles being used for a commercial use of any type to utilize the Public Parking Area.

3.3 Licensee shall be authorized to regulate the use by patrons of the Public Parking Area pursuant to Boise City Code, Title 10, Chapter 11, which provides for the assessment of parking citations charging reasonable fines for violations of use or hours of operation of the Public Parking Area.

SECTION 4. WAIVER AND ESTOPPEL STATEMENT BY LICENSEE. Licensee acknowledges and agrees that the license granted herein is temporary, non-transferable and merely a permissive use of a portion of the Right-of-Way pursuant to this Agreement. Licensee further acknowledges and agrees that it specifically assumes the risk that the license pursuant to this Agreement may be terminated before Licensee has realized the economic benefit of the cost of installing, constructing, repairing or maintaining any or all

LICENSE AGREEMENT - Page 2
Improvements, and Licensee hereby waives and estops itself from asserting any claim that the license is in any way irrevocable because Licensee has expended funds on the Improvements and the Agreement has not been in effect for a period sufficient for Licensee to realize the economic benefit from such expenditures.

SECTION 5. TERM.

5.1 The term of this Agreement will commence on the Effective Date and will continue until terminated by either party, with or without cause, which termination shall be effective following thirty (30) days' advance written notice of termination given the other party.

5.2 If Licensee defaults in the performance of any obligations incumbent upon it to perform hereunder, ACHD may terminate this Agreement and the rights extended to Licensee hereunder at any time, effective at the end of thirty (30) days following the date ACHD shall provide written notice of termination to Licensee, which notice shall specify such default(s). Licensee shall have such thirty (30) day period to correct and cure the specified defaults, and if so corrected and cured, to the satisfaction of ACHD, this Agreement shall not be terminated but shall continue in full force and effect.

5.3 Upon termination of this Agreement, any encroachments remaining within the Right-of-Way shall be unauthorized and subject to removal in accordance with Idaho Code § 40-2319.

SECTION 6. FEE. There is no fee for Licensee's Authorized Use of the Public Parking Area under this Agreement.

SECTION 7. MAINTENANCE; FAILURE TO MAINTAIN; RELOCATION OF UTILITIES.

7.1 At its sole cost and expense, Licensee shall maintain the Improvements in good condition and repair and as required to satisfy applicable laws, the policies of ACHD and sound engineering practices. Subject to the permitting requirements in Section 9 below, Licensee shall have access over, across and under the Right-of-Way for the purposes of accomplishing such repair and maintenance to the Public Parking Area.

7.2 If the Highway on and/or adjacent to the Right-of-Way is damaged as a result of:

(i) the performance by Licensee of the maintenance required by Section 7.1, or the failure or neglect to perform such maintenance; and/or

(ii) Licensee's design, installation or use of the Improvements, regardless of cause;

at its sole cost and expense, Licensee shall forthwith correct such deficiency and restore the Highway and the surface of the Right-of-Way to the same condition it was in prior thereto, and if Licensee shall fail or neglect to commence such correction and restoration within twenty-four (24) hours of notification thereof, ACHD may proceed to do so, in which

LICENSE AGREEMENT - Page 3
event Licensee agrees to reimburse ACHD for the costs and expenses thereof, including, without limitation, reasonable compensation for the use of staff and equipment of ACHD.

7.3 Notwithstanding the provisions of Section 7.2, should an emergency exist related to Licensee’s use of this license which threatens the safety or function of the Highway on or adjacent to the Right-of-Way or the safety of the public use thereof, ACHD shall have the right to immediately perform, on behalf of, and at the cost of Licensee necessary emergency repairs.

7.4 The Parties do not anticipate any underground construction or installation, except for the possible planting of trees, but in the event such underground construction is necessary, Licensee will be responsible for the expense of relocating any existing utilities located on the Right-of-Way as may be required in connection with any construction or installation of Improvements (including planting of trees) by Licensee in the Public Parking Area.

SECTION 8. RELOCATION OF IMPROVEMENTS. If during the term of this Agreement ACHD requires, in its sole discretion, at any time, and from time to time, that the Highway on and/or adjacent to the Right-of-Way be widened and/or realigned, redesigned, improved and/or reconstructed, Licensee hereby accepts responsibility for all costs for relocating, modifying or otherwise adapting the Improvements to the Public Parking Area to such realignment and/or relocation and/or reconstruction if required by ACHD, which shall be accomplished by Licensee according to designs, plans and specifications approved in advance by ACHD in writing; provided Licensee may elect to terminate this Agreement in lieu of complying with this responsibility, and further provided ACHD gives Licensee adequate written notice as necessary to allow Licensee to redesign, relocate, modify or adapt any Improvements to the Public Parking Area to such realignment and/or relocation and/or reconstruction of the Highway and also licenses Licensee such additional area of its right-of-way, if any, as may be necessary for the proper operation of the Improvements.

SECTION 9. PERMIT. If any Improvements, or any reconstruction, relocation or maintenance thereof requires Licensee to obtain a permit under ACHD policies, Licensee shall first obtain such permit from ACHD (Construction Services Division) before commencing such work, and pay the required fees and otherwise comply with the conditions set forth therein.

SECTION 10. NO TITLE IN LICENSEE. Licensee shall have no right, title or interest in or to the Right-of-Way other than the right to temporarily use the same pursuant to the terms of this Agreement.

SECTION 11. NO COSTS TO ACHD. Any and all costs and expenses associated with Licensee’s Authorized Use of the Public Parking Area, or any construction or installation of Improvements thereon, or the repair and maintenance thereof, or the relocation of Improvements or utilities thereon, or the restoration thereof at the termination of this Agreement, pursuant to the license granted by this Agreement, shall be at the sole cost and expense of Licensee. The exception being for those costs or expenses that are
caused by the action, inaction, or omission of ACHD or its employees, contractors, or agents.

SECTION 12. TAXES AND ASSESSMENTS. Licensee is an Idaho Municipal Corporation, and the Improvements are for a public purpose. Therefore, any Improvements are unlikely to be subject to taxes or assessments. However, should any special assessments or personal property taxes be levied and assessed on the Improvements during the term of the Agreement, Licensee agrees to pay them.

SECTION 13. RESTORATION ON TERMINATION. Upon termination of this Agreement, Licensee will promptly remove all Improvements and restore the Public Parking Area to at least the condition it was in prior to the Licensee’s use. Should Licensee fail or neglect to promptly remove any Improvements and restore the Public Parking Area to its condition prior to the Licensee’s use, ACHD may, after providing Licensee with reasonable notice, do so, and assess Licensee for the actual costs thereof. Provided, ACHD and Licensee may agree in writing that some or all of any such Improvements are to remain on the Public Parking Area following termination, and by entering into such an agreement Licensee thereby disclaims all right, title and interest in and to the same, and hereby grants such Improvements to ACHD, at no cost.

SECTION 14. INDEMNIFICATION. Licensee 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 Licensee, Licensee’s employees, contractors and agents, to properly and reasonably make Authorized Use of the Public Parking Area or properly construct, install, repair or maintain any Improvements thereon, or that otherwise result from the use and occupation by Licensee of the Public Parking Area depicted in Exhibit 1A and Exhibit 1B or arise out of and from this Agreement, including any attorney fees and costs that may be incurred by ACHD in defense of such claims or actions indemnified against by Licensee hereunder, except those claims or actions that are caused by the action, inaction, or omission of ACHD or its employees, contractors, or agents. For claims or actions arising out of failures or neglects occurring during the term of this Agreement, Licensee’s obligations pursuant to this section shall survive the termination of this Agreement. Nothing herein shall be deemed a waiver of any privilege, immunity, protection or defense afforded to the Licensee as an entity of the State of Idaho, under the Idaho Constitution, the Idaho Tort Claims Act, or any other applicable law, and shall not be construed to waive the Licensee’s sovereign immunity, which is hereby expressly retained. Provided, however, that Licensee’s ability to assert such privileges, immunities, protections or defenses against third parties shall not limit or diminish its obligation to indemnify ACHD as provided herein.

SECTION 15. COMPLIANCE WITH LAW; WASTE AND NUISANCES PROHIBITED. In connection with Licensee’s use of a portion of the Right-of-Way, throughout the term of this Agreement, Licensee covenants and agrees to: (i) comply and observe in all respects any and all, federal, state and local statutes, ordinances, policies, rules and regulations, including, without limitation, those relating to traffic and pedestrian safety, the Clean Water Act and/or to the presence, use, generation, release, discharge, storage or disposal in, on or under the Right-of-way of any Hazardous Materials (defined as any
substance or material defined or designated as hazardous or toxic waste, material or substance, or other similar term, by any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future); (ii) obtain any and all permits and approvals required by ACHD or any other unit of government; and (iii) commit no waste or allow any nuisance on the Public Parking Area. Licensee covenants and agrees to indemnify and hold ACHD harmless from and against any and all claims, demands, damages, liens, liabilities and expenses (including without limitation, reasonable attorneys’ fees), arising directly or indirectly from or in any way connected with the breach of the foregoing covenant, except to the degree such claim, demand, damage, lien, liability, or expense is caused by, or results from, any act, omission, or failure to act of ACHD or its employees, contractors, or agents. These covenants shall survive the termination of this Agreement.

SECTION 16. ASSIGNMENT. Licensee cannot sell, assign or otherwise transfer this Agreement, the license herein extended or any of its rights hereunder except with the prior written consent of ACHD, which consent will not be granted unless the assignee assumes all obligations, warranties, covenants and agreements of Licensee herein contained.

SECTION 17. ATTORNEY FEES. In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorney fees.

SECTION 18. NOTICE. Any notice under this Agreement shall be in writing and be delivered in person, or by United States Mail, postage prepaid, or by public or private 24-hour overnight courier service (so long as such service provides written confirmation of delivery), or by facsimile verified by electronic confirmation. All notices shall be addressed to the party at the address set forth below or at such other addresses as the parties may from time to time direct in writing by notice given the other. Any notice shall be deemed to have been given on (a) actual delivery or refusal, (b) three (3) days following the day of deposit in the United States Mails, (c) the day of delivery to the overnight courier, or (d) the day facsimile delivery is electronically confirmed.

If to ACHD:
Ada County Highway District
3775 Adams Street
Garden City, Idaho 83714
Attn: Right-of-Way Department
If to Licensee:  
Boise City Department of Parks and Recreation  
ATTN: Property Management  
1104 Royal Blvd.  
Boise, Idaho 83706

With a copy to:  
Boise City Attorney’s Office  
Attn: Abigail Germaine  
150 N. Capitol Boulevard, 4th Floor, Building 2  
Boise, Idaho 83702

SECTION 19. SUCCESSORS AND ASSIGNS. This Agreement, the license herein extended and the covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their successors and, if consented to by ACHD under Section 16, Licensee’s assigns.

SECTION 20. EXHIBITS. All exhibits attached hereto and the recitals contained herein are incorporated herein as if set forth in full herein.

SECTION 21. NO RECORDATION. This Agreement shall not be recorded in the Official Real Property Records of Ada County, Idaho.

SECTION 22. SELF-INSURANCE. As a self-insured public entity, Licensee represents and warrants that, at all times during the term of this Agreement, it will have ready access to a minimum of Five Hundred Thousand Dollars ($500,000.00) against all liability of Licensee arising out of and in connection with its use or occupancy of the Right-of-Way hereunder. The limits of such funds shall not limit Licensee’s liability hereunder.

SECTION 23. Warranty of Authority to Execute.

23.1 The person executing this Agreement on behalf of ACHD represents and warrants due authorization to do so on behalf of ACHD, and that upon execution of this Agreement on behalf of ACHD, the same is binding upon, and shall inure to the benefit of, ACHD.

23.2 The person executing the Agreement on behalf of Licensee represents and warrants due authorization to do so on behalf of Licensee, and that upon execution of this Agreement on behalf of Licensee, the same is binding upon, and shall inure to the benefit of, Licensee.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day, month and year first set forth above.
LICENSSEE: City of Boise

By: David H. Bieter, Mayor

5/17/16

ATTEST:

Lynda Lowry
By: Lynda Lowry
Its: Ex-Officio City Clerk

5/17/16

STATE OF IDAHO )
) ss.

County of Ada )

On this 17th day of May, 2016, before me, Debbie Westervelt, a Notary Public in and for the State of Idaho, personally appeared David H. Bieter, known or identified to me to be the Mayor of the City of Boise, and Lynda Lowry, known or identified to me to be the Ex-Officio City Clerk of the City of Boise, the persons who executed and attested this instrument on behalf of said City, and acknowledged to me that the City of Boise executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day, month, and year in this certificate first above written.

Debbie Westervelt
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 8/24/2021
ADA COUNTY HIGHWAY DISTRICT

By: Kent Goldthorpe
It's: President

ATTEST:

By: Bruce Wong
It's: Director

STATE OF IDAHO )
 ) ss.
County of Ada )

On this ____ day of May, 2016, before me, ____________________________, a Notary Public in and for the State of Idaho, personally appeared, Kent Goldthorpe, known or identified to me to be the President of the Ada County Highway District Commission, and Bruce Wong, known or identified to me to be the Director of the Ada County Highway District, the persons who executed this instrument on behalf of said District, and acknowledged to me that the Ada County Highway District executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

___________________________________________
Notary Public for Idaho
Residing at: ________________________________
My Commission Expires: ______________________
EXHIBITS

Exhibit 1A – Depiction of the Licensed Premises (the “Public Parking Area”) within a portion of the Public Right-of-Way

Exhibit 1B – Depiction of the Licensed Premises (the “Public Parking Area”) within a portion of the Public Right-of-Way

Exhibit B – Approved Designs, Plans, and Specifications for Improvements within the Licensed Premises (the “Public Parking Area”).
color, national origin, gender, disability or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any ACHD service, program or activity.