January 31, 2017

TO: Commissioners, Director, and Deputy Directors

FROM: Mitch Skiles, Transportation Modeler

SUBJECT: Agreement with CCDC for Funding toward the 5th & 6th Street Conversion Concept
Staff Report for February 8, 2017 Commission Meeting

Executive Summary
This is a cooperative agreement between the Capital City Development Corporation (CCDC) and ACHD in which CCDC agrees to pay the sum of $40,000 to help facilitate the concept design for converting 5th Street and 6th Street to two-way operations.

Facts & Findings
The 5th and 6th Street Conversion Concept Study (“Study”) is currently under way to develop and select an alternative for the ultimate configuration of the two streets. ACHD is leading this study and has recently procured professional services to complete the Study with a contract amount of $79,481. Through this agreement CCDC agrees to contribute $40,000 towards the contract amount.

Fiscal Implications
The Study is scheduled to be completed in FY17. The preferred alternative is planned to proceed into design and construction in the subsequent years. Construction is programmed for FY19 along with maintenance of the two streets in ACHD’s adopted FY17-21 Integrated Five Year Work Plan.

Policy Implications
At the conclusion of the 5th & 6th Street Conversion Feasibility Study in September of 2016, the Commission encouraged staff to find ways to make construction of the preferred alternative possible by FY19. Cooperative funding with associated partner agencies is one way to help make that possible. ACHD legal staff has reviewed this agreement.

Alternatives
Alternative 1: Approve the agreement as written and authorize the Commission President to sign.
Alternative 2: Direct staff to renegotiate the terms of the agreement.
Alternative 3: Deny the agreement and move forward with the Study without financial support from CCDC.

Recommendation
Staff recommends Alternative 1.

Attachment: Written Agreement Between ACHD and CCDC
WRITTEN AGREEMENT BETWEEN ADA COUNTY HIGHWAY DISTRICT
AND CAPITAL CITY DEVELOPMENT CORPORATION
FOR 5th AND 6th STREET CONVERSION CONCEPT DESIGN WORK

THIS WRITTEN AGREEMENT FOR STREET CONVERSION CONCEPT DESIGN WORK ("Agreement") is made as of the ____ day of ____________, 2017, by and between the 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, exercising governmental functions and powers, organized and existing under the Idaho Urban Renewal Law, Chapter 20, Title 50, Idaho Code ("CCDC"), upon the following terms and conditions:

Recitals

A. ACHD is a single county-wide highway district, a public entity, organized and existing pursuant to Idaho Code Title 40, Chapter 14, as amended and supplemented, with the exclusive jurisdiction, and authority to maintain, improve, regulate, and operate public rights-of-way in Ada County.

B. CCDC is the urban renewal agency of Boise, Idaho, a public body, corporate and politic, organized and existing pursuant to Idaho Code Title 50, Chapter 20, as amended and supplemented, with the power to undertake and carry out urban renewal projects and related activities within its urban renewal districts.

C. CCDC and ACHD desire, by the terms of this Agreement, to cooperate in shared funding for ACHD’s concept design for converting 5th Street and 6th Street to two-way operations ("Concept") in Boise, Idaho.

D. In exchange for the receipt of funds from CCDC, ACHD has agreed to undertake the Concept, with probable design of the preferred alternative in ACHD Fiscal Year 2018 and probable construction of the preferred alternative in ACHD Fiscal Year 2019.

E. Idaho Code § 67-2332 provides that one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform, provided that such contract is authorized by the governing body of each party and that such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.
Agreement

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are made a part of the Agreement, and not mere Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do mutually undertake, promise, and hereby agree as follows:

Article I
Funding of Concept

CCDC agrees to pay ACHD the sum of Forty Thousand Dollars ($40,000.00) to facilitate the Concept by ACHD. Payment by CCDC shall be made to ACHD within sixty (60) days following execution of this Agreement by both parties.

Article II
Consideration

2.1 As consideration for CCDC funding the Concept as set forth in Article I hereof, ACHD agrees to complete the Concept and to pay any costs thereof that may exceed the sum of Forty Thousand Dollars ($40,000.00).

2.2 Once the Concept is complete, ACHD shall share the Concept with CCDC. ACHD and CCDC shall work together to arrive at a Preferred Conversion Alternative design for 5th and 6th Street two-way conversion. After a Preferred Conversion Alternative has been mutually agreed upon, ACHD shall diligently pursue completion thereof, with probable design in ACHD Fiscal Year 2018 and probable construction in ACHD Fiscal Year 2019.

2.3 This Agreement is not intended to, and shall not, preclude or impede the ability of ACHD to design, redesign, construct, reconstruct, install, maintain, relocate or remove 5th Street or 6th Street as authorized by law and as ACHD determines, in its sole discretion, is appropriate.

Article III
Default and Remedies

In the event of a breach hereunder by any party, the non-breaching party shall have all remedies available at law or in equity, including injunctive or other equitable relief. 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’s fees and disbursements, and also including reasonable attorney’s fees and costs associated with any appeal of a judgment. The prevailing party will be that party who was awarded a judgment as a result of
trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by that party.

Article IV
Assignment

Neither party shall have the right to assign or transfer its interest in this Agreement without the prior written consent of the other party. Any purported assignment or transfer in violation of this paragraph shall be null and void and of no effect and further shall be a violation of this Agreement.

Article V
Other Acts

CCDC and ACHD each hereby agree to perform such other acts and to execute, acknowledge and/or deliver such other instruments, documents, and materials as may be reasonably necessary to effect consummation of the transaction contemplated herein.

Article VI
Paragraph Headings

The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.

Article VII
Interpretation

Whenever used in this Agreement, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Article VIII
Applicable Law and Parties Bound

This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho and shall be binding upon and inure to the benefit of the parties hereto and, subject to the provisions of Article IV hereof, their respective successors and permitted assigns.
Article IX
Amendments

All amendments and/or supplements to this Agreement must be in writing and executed by each party hereto. However, such amendments and/or supplements may be executed in counterparts, all of which counterparts taken together shall be deemed to constitute but one document.

Article X
Entire Agreement

The parties acknowledge and agree that at all times they have intended that none of the preliminary negotiations concerning this transaction would be binding on either party, and that they would be bound to each other only by a single, formal, comprehensive document containing this paragraph and all of the agreements of the parties. The parties acknowledge that none of the prior oral agreements between them (and none of the representations on which either of them has relied) relating to the subject matter of this Agreement shall have any force or effect whatsoever, except as and to the extent that such agreements and representations have been incorporated in this Agreement.

Article XI
Counterparts

This Agreement may be executed in counterparts, all of which counterparts taken together shall be deemed to constitute but one original.

Article XII
Authority to Execute

12.1 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.

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

End of Agreement | Signatures appear on the following page.
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

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<tr>
<th>ATTEST:</th>
<th>ADA COUNTY HIGHWAY DISTRICT</th>
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<tr>
<td>By:</td>
<td>By:</td>
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<tr>
<td>Name: Bruce Wong</td>
<td>Name: Paul Woods</td>
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<td>Title: Director</td>
<td>Title: President, Board of Commissioners</td>
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<td>ATTEST:</td>
<td>CAPITAL CITY DEVELOPMENT CORPORATION</td>
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<tr>
<td>By:</td>
<td>By:</td>
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<tr>
<td>Name: Mary Watson</td>
<td>Name: John Brunelle</td>
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<tr>
<td>Title: Attorney at Law</td>
<td>Title: Executive Director</td>
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<th>Budget Info / For CCDC Use</th>
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<td>Account</td>
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<td>Contract Term</td>
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STATE OF IDAHO )
) ss.
COUNTY OF ADA )

On this _____ day of ____________, 2017 before me, a notary public in and for said state, personally appeared PAUL WOODS and BRUCE WONG, PRESIDENT of the ADA COUNTY HIGHWAY DISTRICT BOARD OF COMMISSIONERS and DIRECTOR of the ADA COUNTY HIGHWAY DISTRICT, respectively, and known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for and on behalf of said highway district.

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 ________________, Idaho
My commission expires:

STATE OF IDAHO )
) ss.
COUNTY OF ADA )

On this _____ day of ____________ , 2017, before me, the undersigned, personally appeared JOHN BRUNELLE and MARY WATSON, EXECUTIVE DIRECTOR and ATTORNEY of the CAPITAL CITY DEVELOPMENT CORPORATION, respectively, and known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for and on behalf of said corporation.

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 Boise, Idaho
My commission expires: 4/22/2022

WRITTEN AGREEMENT FOR STREET CONVERSION CONCEPT DESIGN WORK - 6