December 18, 2017

To: ACHD Commission
From: Development Review Section
       Kaci Bader
Subject: Interagency License Agreement
Meeting Date: January 3, 2018

FACTS & FINDINGS:

1. City of Boise ("Licensee") desires to use the Right-of-Way for the limited purposes of installing and maintaining features consisting of trees, grass, perennials, diagonal parking, and landscape irrigation system.

2. Idaho Code § 67-2332 expressly authorizes the Licensee and ACHD to enter into agreements to perform any governmental service activity, or undertaking that is authorized by law and within the power, privilege or authority of said agencies.

3. Ada County Highway District Legal staff has reviewed and approved the License Agreement for form and content.

RECOMMENDATION:

1. Approve the License Agreement and authorize the President to endorse.

ATTACHMENTS:

1. Interagency License Agreement
INTERAGENCY TEMPORARY LICENSE AGREEMENT

THIS INTERAGENCY TEMPORARY LICENSE AGREEMENT (the “Agreement”) is made and entered into this 5th day of December, 2017 by and between the City of Boise, a municipal corporation in Idaho (“Licensee”) and the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the state of Idaho, ("ACHD").

WITNESSETH:

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

SECTION 1. RECITALS.

1.1 City of Boise (“Licensee”) is a municipal corporation 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.

1.2 ACHD owns and has exclusive jurisdiction over the public right-of-way located in Ada County, Idaho, municipally described as S. Hilton Street and W. Peg Street, more particularly described and/or depicted on Exhibit "A" attached hereto (the “Right-of-Way”).

1.3 Idaho Code § 67-2332 expressly authorizes the Licensee and ACHD to enter into agreements to perform any governmental service activity, or undertaking that is authorized by law and within the power, privilege or authority of said agencies.

1.4 Licensee desires a license to use 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 extend such license to Licensee.

SECTION 2. LICENSE: LICENSE NOT EXCLUSIVE.

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

Licensee is to construct, install and maintain features consisting of trees, grass, perennials, diagonal parking, and landscape irrigation system per Exhibit B and the ACHD approved civil drawings located within ACHD right-of-way along S. Hilton St. and W. Peg St. Final grading of landscaped areas shall slope away from right-of-way "hardscapes" improvements including the edge of pavement, curbing and sidewalks. In general, licensee to install landscaping and sprinklers in a manner to eliminate irrigation flows and/or ponding of irrigation water within the ACHD Right of Way. Access to inlets
and outlets of ACHD Drainage Areas shall not be planted with trees, shrubs or any landscaping that would impede heavy equipment vehicle access. Licensee shall observe the 40 foot sight triangle and will not plant any shrubs or trees within the area or over any utility lines. All trees in the public right-of-way shall be maintained by Licensee for clearance of 14 feet over all roadways as measured at the gutter plate, and 8 feet over all sidewalks. Licensee to contact Digline Inc., prior to start of construction. Licensee to contact Construction Services at 387-6280 to verify if a construction permit is required.

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 public right-of-way. If the 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)) 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 Right-of-Way and statutory rights of utilities to use the public right-of-way. This Agreement it 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, OR INSTALLATION OF IMPROVEMENTS. Any repairs or maintenance, of the Licensee’s improvements currently located in the Right-of-Way or the installation or construction of improvements by Licensee in the Right-of-Way as permitted by the Authorized Use, (the “Improvements”), shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, its 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 Improvements, and the responsibility therefor shall be and remain in Licensee.

SECTION 4. WAIVER AND ESTOPPEL STATEMENT BY LICENSEE. Licensee acknowledges and agrees that the license granted herein is temporary, and merely a permissive use 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 the Improvements, and Licensee hereby waives and estoppels 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 3rd day of January, 2018, 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 to
the other party. Upon expiration of the THIRTY DAYS, ACHD shall record a Revocation of License Agreement in the Official Real Property Records of Ada County, Idaho.

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.

SECTION 6. FEE. There is no annual fee for the Licensee's Authorized Use of the Right-of-Way 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. Licensee shall have access over, across and under the Right-of-Way for the purposes of accomplishing such repair and maintenance.

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, 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 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 the Licensee's use of this license which threatens the stability 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 Licensee will be responsible for the relocation of any existing utilities located on the Right-of-Way as may be required in connection with any construction or installation of Improvements by Licensee in the Right-of-Way.

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 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 ACHD
gives Licensee adequate written notice as necessary to allow Licensee to redesign, relocate,
modify or adapt the Improvements to the 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 the proposed construction and installation of the 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. Except as expressly provided herein, the terms and
conditions of this Agreement shall not create any type of property right, title or interest in
Licensee 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 Right-of-Way, 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,
shall be at the sole cost and expense of Licensee.

SECTION 12. TAXES AND ASSESSMENTS. Licensee agrees to pay all special assessments
and personal property taxes that may be levied and assessed on the Improvements during the
term of this Agreement.

SECTION 13. RESTORATION ON TERMINATION. Upon termination of this Agreement,
Licensee will promptly remove all Improvements and restore the Right-of-Way to at least its
present condition, less ordinary wear and tear. Should Licensee fail or neglect to promptly
remove the Improvements and restore the Right-of-Way, ACHD may do so, and assess
Licensee for the costs thereof. Provided, ACHD and Licensee may agree in writing that some
or all of such Improvements are to remain on the Right-of-Way 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. Further provided, if the
Authorized Use of the Right-of-Way under this Agreement is for landscaping in ACHD right-of-
way and the irrigation and maintenance thereof, and the general purpose government with
jurisdiction has adopted ordinances, rules and regulations governing the landscaping and
maintenance of such right-of-way by owners of the adjacent property, to the extent such owners
are obligated to maintain and irrigate the landscaping Licensee need not remove the same from
the Right-of-Way.

SECTION 14. INDEMNIFICATION. To the extent permitted by law, Licensee covenants and
agrees to indemnify and hold 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 Right-of-Way or properly construct, install, plant, repair or maintain the
Improvements thereon, or that otherwise result from the use and occupation of the Right-of-Way
by Licensee, and including any attorney fees and costs that may be incurred by ACHD in
defense of such claims or actions indemnified against by Licensee hereunder. 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.
SECTION 15. COMPLIANCE WITH LAW; WASTE AND NUISANCES PROHIBITED. In connection with Licensee's use 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 occurrence 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 Right-of-Way. To the extent permitted by law, 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. These covenants shall survive the termination of this Agreement.

SECTION 16. ASSIGNMENT. Licensee, upon the prior written consent of ACHD, may sell, assign or otherwise transfer this Agreement. Upon execution of the Assignment, the assignee assumes all obligations, warranties, covenants and agreements of Licensee herein contained.

SECTION 17. ATTORNEYS' 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 attorneys' fees.

SECTION 18. NOTICE. Any notice under this Agreement shall be in writing and be delivered in person, or by United States Mails, 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 E. Adams St.
Garden City, Idaho 83714

If to Licensee: City of Boise
150 N. Capitol Blvd.
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. RECORDATION. This Agreement shall be recorded by ACHD upon execution in the Official Real Property Records of Ada County, Idaho.

SECTION 22. Warranty of Authority to Execute.

22.1 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.

22.2 If Licensee is not a natural person, 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.

LICENSEE:  

CITY OF BOISE  

By: David H. Bieter  
Its: Mayor  
12/5/17  

ATTEST:  

By: Lynda Lowry  
Its: City Clerk  
12/5/17  

STATE OF IDAHO  
County of Ada  

This record was acknowledged before me on __________________________.  
December 5th, 2017  
[date]  

by David H. Bieter, & Lynda Lowry  
(name(s) of individual(s))  

as Mayor & City Clerk  
(type of authority, such as officer or trustee)  

of City of Boise  
(name of party on behalf of whom record was executed)  

Signature of notary public  

DEBBIE WESTERVELT  
NOTARY PUBLIC  
STATE OF IDAHO  
My commission expires: 8/24/2021  

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(3/29/06)
ADA COUNTY HIGHWAY DISTRICT

By: Paul Woods
It's: President

ATTEST:

By: Bruce S. Wong
It's: Director

STATE OF IDAHO
County of Ada

) ss.

This record was acknowledged before me on ________________, 20__ by Paul Woods as President of the Ada County Highway District.

________________________
Signature of notary public

My commission expires: ________

EXHIBITS

Exhibit A – Depiction of ACHD Right-of-Way
Exhibit B – Authorized Use of Right-of-Way

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(3/29/06)