TO: ACHD Commission, Director Wong

FROM: Gary Inselman, Development Services Manager
Impact Fee Administrator

SUBJECT: Cooperative Development Agreement and Impact Fee Credit Agreement
Lake Hazel Road, Cole Road to Orchard Street
Orchard Street, Gowen Road to Lake Hazel Road

MEETING DATE: November 16, 2016

Executive Summary

District staff has negotiated a Cooperative Development Agreement for the improvement of the extension of Lake Hazel Road as a minimum 40 foot rural arterial street from approximately 640-feet east of Cole Road to Orchard Street extended and the extension of Orchard Street as a minimum 40 foot rural arterial street section from Gowen Road south to Lake Hazel Road extended with Challenger Development, Inc. in association with the Syringa Valley Specific Area Plan development. The proposed Cooperative Development Agreement and Impact Fee Credit agreement will provide for the design and construction of the roadways as well as reimbursement of impact fee eligible costs. Staff recommends approval of the Cooperative Development Agreement and Impact Fee Credit Agreement.

FINDINGS:

1. District staff has negotiated a Cooperative Development Agreement for the improvement of the extension of Lake Hazel Road approximately 4,760 feet as a minimum 40 foot rural arterial street section from approximately 640-feet east of Cole Road to Orchard Street extended and the extension of Orchard Street approximately 6,350 feet as a minimum 40 foot rural arterial street section from Gowen Road south to Lake Hazel Road extended with Challenger Development, Inc. (Developer); Corey Barton, President of Challenger Development, Inc.

2. The Developer is proposing the Project to extend Lake Hazel Road as a minimum 2 lane rural arterial street from approximately 640-feet east of Cole Road to Orchard Street extended and to extend Orchard Street as a minimum 2 lane rural arterial street from Gowen Road south to Lake Hazel Road extended as required by the January 27, 2016 ACHD Commission actions on the Syringa Valley Specific Area Plan and Kirsten Subdivision preliminary plat.

3. The Cooperative Development Agreement is required for this Lake Hazel Road and Orchard Street extension project because the Project is listed in the Capital Improvements Plan and eligible for reimbursement from impact fees.

4. Attached is a copy of the Cooperative Development Agreement (the Agreement) drafted by District staff. The Agreement provides for the following: contributions toward costs of the project, design...
criteria for the project, obligations and agreements of the Developer and obligations and agreements of ACHD.

5. All Project costs are reimbursable excluding: costs associated with the design, construction, testing and inspection of sidewalks; utilities and irrigation; administrative and overhead costs of Developer other than the Construction Manager’s compensation defined in Section 1.1 of the Agreement; interest on funds used for the Project; and liquidated damages.

6. The ACHD reimbursable Project design and construction costs are estimated at $2,400,000.

7. Lake Hazel Road from Cole Road to Orchard Street is listed in the Capital Improvements Plan for construction as a new roadway in the years 2016-2020.

8. Orchard Street from Gowen Road to Lake Hazel Road is listed in the Capital Improvements Plan for construction as a new roadway in the years 2016-2020.

9. The Developer is proposing to construct the Project beginning in the fall of 2017 and complete the project prior to May 31, 2018.

10. The Agreement provides that after issuance of the certificate of completion, ACHD will pay Developer the Reimbursable Project costs in the following installments:

   a. The first $1,000,000 of the reimbursable Project costs will be subject to an Impact Fee Credit Agreement attached to the Agreement as Exhibit B and made available within thirty (30) days after agreement as to the final amount of the Reimbursable Project Costs.
   
   b. The remaining balance of the reimbursable Project costs up to a maximum of One Million dollars ($1,000,000) following the payment above shall be paid within thirty (30) days after agreement as to the final amount of the Reimbursable Project Costs.
   
   c. The remaining balance of the reimbursable Project costs exceeding the payments made in a. and b. above shall be paid no later than October 31, 2018.

11. The Cooperative Development Agreement and Impact Fee Credit Agreement have been executed by the Developer.

12. The Cooperative Development Agreement and Impact Fee Credit Agreement have been approved for form and content by the District Legal Department.

**FINANCIAL IMPLICATIONS:**

1. Under the terms of the proposed Cooperative Development Agreement ACHD shall pay Developer the contract amount or actual reimbursable Project costs upon completion of the Project subject to the terms and conditions of the proposed Agreement. Staff estimates the reimbursable Project costs at $2,400,000.

2. The estimated reimbursable Project costs will be paid by an Impact Fee Credit of $1,000,000 and the remaining balance from the FY2018 and FY2019 Corridor Preservation budgets.

3. The project is within the boundaries of the Ada County Impact Fee Service Area. As of September 30, 2016 the Service Area had a balance of ($25,148,453).

4. Approval of this Project and the Agreement should not negatively impact other District projects.
RECOMMENDATION:

1. Approve the Cooperative Development Agreement and Impact Fee Credit Agreement and authorize the President of the Commission to execute the agreements on behalf of the District.

Attachment: Cooperative Development Agreement
COOPERATIVE DEVELOPMENT AGREEMENT

This COOPERATIVE DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this 16th day of November, 2016, by and between Challenger Development, Inc. (the “Developer”), and the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the state of Idaho (“ACHD”).

RECITALS

WHEREAS ACHD is a single county-wide highway district organized and existing under the laws of the State of Idaho, with the responsibility, jurisdiction, and authority to improve public roads and assess development impact fees in accordance with the Idaho Development Impact Fee Act;

WHEREAS the parties desire to describe and provide for the construction of the Project (as defined below); and

WHEREAS the parties desire to provide for the allocation and payment of the Project Costs (as defined below) between the parties.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1.
DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1 The term “Construction Manager” shall mean Shawn Brownlee an employee of Trilogy Development, who shall coordinate and supervise the Project. For the purpose of this Agreement, the Construction Manager’s compensation shall be three percent (3%) of the Reimbursable Project Costs.

1.2 The term “Engineer’s Estimate” means an estimate of the Project Costs prepared by the Project engineer (or other engineer licensed under the laws of the state of Idaho).

1.3 The term “Impact Fee” shall mean a payment of money imposed by ACHD as a condition of development approval pursuant to ordinance adopted by ACHD under the authority granted to it by the Idaho Development Impact Fee Act, and shall not include any other fees, permits or assessments by ACHD or any other agency.
1.4 The term “Non-Impact Fee Eligible” portion of Project Costs shall mean that portion of the Reimbursable Project Costs which relate to irrigation, utility and landscaping costs as detailed in the ACHD 2016 Capital Improvements Plan.

1.5 The term “Project” refers to the following:

   The extension of Orchard Street approximately 6,350 feet as a minimum 40 foot rural arterial street section from Gowen Road south to Lake Hazel Road extended; and the extension of Lake Hazel Road approximately 4,760 feet as a minimum 40 foot rural arterial street from approximately 640-feet east of Cole Road to Orchard Street extended.

1.6 The term “Project Costs” refers to all costs of completing the Project, including (i) all design, construction, testing and inspection costs, (ii) compensation for the Project Engineer and Construction Manager as provided herein, and (iii) all other costs related to and reasonably necessary for completion of the Project, excluding the cost of acquiring any additional right-of-way, costs associated with any necessary development approvals and all costs associated with the preparation, review and negotiation of this Agreement.

1.7 The term “Project Engineer” shall mean a licensed engineer engaged by Developer to manage and coordinate the design, inspection and certification of the Project. The Project Engineer, the terms of his or her compensation including the scope of work shall be subject to approval by ACHD.

1.8 The term “Reimbursable Project Costs” shall mean all Project Costs excluding the following:

   a. Costs for any new utility services installed to serve exclusively Developer’s parcels within the development area;

   b. Costs to construct sidewalk;

   c. Costs for landscaping abutting Developer’s parcels;

   d. Administrative and overhead costs of Developer other than the Construction Manager’s compensation defined in Section 1.1;

   e. Interest on funds used for the Project;

   f. Liquidated damages.

1.9 The terms “Substantial Completion” and “Substantially Complete” shall have the same meaning as in the ACHD General Conditions for a construction contract, which provide as follows: “The Work is Substantially Complete when the Resident Engineer determines the Owner has full and unrestricted use and benefit of the facilities, both
from an operational and safety standpoint, and only minor incidental work or correction or repair remains for the physical completion of the total Contract.’’

SECTION 2.
DESIGN AND BIDDING OF THE PROJECT

2.1 Developer to Arrange for Project Design. Developer shall provide for the design of the Project by the Project Engineer who shall be a design professional acceptable to, and in accordance with the customary requirements of ACHD. The design of the Project shall be in accordance with the standards and specifications set forth in the ACHD Policy Manual.

2.2 Access to Public Right-of-Way. ACHD shall provide access to the public right-of-way to Developer and its agents as may be reasonably necessary in connection with the Project design and the Engineer’s Estimate.

2.3 Final Approval of Final Plans. ACHD shall approve, in its reasonable discretion, the Engineer’s Estimate and the Project plans. ACHD and Developer shall acknowledge in writing the final, approved Project plans and the Engineer’s Estimate prior to commencement of construction, and neither shall thereafter be modified in any material way unless such modifications are approved in writing signed by ACHD and Developer.

2.4 Delivery of Documents to ACHD. Following the parties’ written acknowledgment of the final Project plans and Engineer’s Estimate, Developer shall cause the Project engineer to submit the following to ACHD:

a. three (3) sets of the Project plans; and

b. any other related information requested by ACHD.

2.5 Access to Information by ACHD. Developer shall provide ACHD with access to all designs, plans, specifications, reports, data and other materials (both digital, electronic and hard copy) produced by Developer and its agents and contractors under this Agreement.

2.6 Ownership of Design Plans. Upon execution of this Agreement and the parties’ written acknowledgment of the final Project plans and Engineer’s Estimate, Developer shall forward to ACHD copies of all previously prepared design plans for the Project in its and/or its consultant’s possession, including but not limited to design plans, data, consultant reports prepared by third parties, soil reports, engineering reports, and right-of-way plans (collectively “design plans”). Developer shall obtain any necessary third-party consents required by ACHD for ACHD’s possession and potential use of the design plans. In the event of Developer’s default under this Agreement, all ownership interest in the design plans shall transfer to ACHD and ACHD shall become the exclusive owner of said design plans for any use whatsoever including but not limited to completion of the Project. ACHD shall not be obligated
to reimburse Developer for the cost of said design plans unless the design plans have been completed to ACHD standards and specifications and ACHD proceeds to utilize the design plans to complete the project or any portion of the project. Developer hereby indemnifies and holds ACHD harmless from and against any and all loss, injury, death and damage, and attorney’s fees and cost that might be incurred by ACHD in defending any claim that may result solely from the use of the design plans by ACHD, its Commissioners, employees, contractors and/or agents.

SECTION 3.
CONSTRUCTION CONTRACT

3.1 Soliciting Bids. After ACHD has approved the Project plans and the Engineer’s Estimate, Developer shall solicit a minimum of three (3) bids for construction of the Project in compliance with the approved Project plans and the related requirements for public highway projects as required by Idaho law. As an alternative, Developer may hire, at Developer’s sole cost and expense, a construction project manager to solicit competitive bids from subcontractors following the requirements set forth above.

   a. ACHD shall review and approve the bid amount prior to Developer awarding contract.

3.2 Contract Terms. The construction contract shall include, at minimum, the following provisions:

   a. a requirement that the contractor provide payment and performance bonds required by the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code naming ACHD as an additional beneficiary;

   b. a requirement that the successful bidder be licensed as a public works contractor (Chapter 19, Title 54, Idaho Code);

   c. a requirement that the construction of the Project in accordance with the approved designs, plans and specifications be Substantially Complete within thirty-eight (38) weeks from the date Developer issues a notice to proceed to the contractor, or no later than May 31, 2018 and final completion of the total contract within four (4) weeks from the date of Substantial Completion;

   d. a provision that the time for Substantial Completion and completion of the Project will only be extended by (i) acts of God, (ii) war, (iii) delays caused by ACHD, (iv) unreasonable delays caused by utilities or if rock is encountered in the excavation, as reasonably determined by ACHD, or (v) any request for extensions of time approved in writing by ACHD;

   e. a requirement that the contractor shall pay liquidated damages of One Thousand Dollars ($1,000) per day for each day that Substantial Completion of the construction is delayed beyond thirty-eight (38) weeks from the date Developer issues a notice to proceed, or no later than May 31, 2018, or beyond the extended
date as allowed by Section 3.2(e) above and for each day that final completion of the total contract for the Project is delayed beyond four (4) weeks from the date of Substantial Completion;

f. a requirement that the contractor maintain liability insurance insuring against bodily injury or death with limits of not less than Two Million Dollars ($2,000,000) per person and per occurrence, and property damage with a limit of One Million Dollars ($1,000,000) per occurrence, naming both Developer and ACHD as additional insureds;

g. a provision that the contractor shall indemnify ACHD and Developer from any and all claims by third persons arising out of the performance of the contract;

h. a provision that the contractor shall obtain the Environmental Protection Agency (EPA) Construction General Permit (CGP) and that the contractor shall file a Notice of Intent (NOI) and develop and implement an approved Storm Water Pollution Prevention Plan (SWPPP) prior to commencement of construction, and that the contractor shall not file a Notice of Termination (NOT) with the EPA until authorized in writing by ACHD. Authorization for the contractor to file the NOT will be granted by ACHD when the area subject to the CGP has achieved final stabilization as defined in the CGP;

i. A provision that the contractor shall provide quality control and process control testing following ACHD QC-QA Procedures attached hereto as Exhibit A;

j. at least a two (2) year warranty on the work and materials of the Project that is assignable to ACHD, said warranty period shall begin immediately upon issuance of Certificate of Completion; and

k. a provision that provides for the Contractor’s agreement to the assignment of the construction contract to ACHD in the event of a default by Developer under this Agreement.

3.3 Conditions Precedent to Execution of Construction Contract. Prior to execution of the construction contract, the following conditions shall be satisfied:

a. Approval of Construction Contract. Developer shall obtain the written approval of ACHD of the form and terms of the construction contract, which may be withheld for any reason, including but not limited to Developer’s failure to obtain a construction contract that contains the provisions set forth in Section 3.2 above, but which shall not otherwise be unreasonably withheld;

b. Right-of-Way Easements. The project may require right-of-way easements from adjacent land owners. The right-of-way easements required for the Project shall be conveyed to ACHD and recorded prior to execution of the construction contract, issuance of ACHD permits and construction of the Project.
c. Letter of Credit or Cash Bond. Developer shall provide ACHD with an irrevocable and unconditional letter of credit in favor of ACHD in an amount equal to one hundred and ten percent (110%) of the total of the contract price of the Project Costs minus the Reimbursable Project Costs for the purpose of assuring ACHD that Developer will perform its obligations hereunder. The letter of credit shall be issued by either a national bank with a branch in Ada County, Idaho or another financial institution acceptable to ACHD and include a provision that ACHD may present documents for any draws on the letter of credit at the local branch. The letter of credit shall be delivered to ACHD prior to Developer’s execution of the construction contract. In lieu of a letter of credit, the Developer may provide a cash bond (cash deposit to ACHD) in the same amount, or pledge other security acceptable to ACHD of equal value. When all Developer’s contractors for the Project have been paid and ACHD has issued its certificate of completion of the Project, such assurance shall be released to Developer. In its sole discretion, ACHD may allow the reduction of the assurance as payments of Costs of the Project are made during the course of construction.

3.4 Copy of Contract to ACHD. Developer shall provide ACHD with a copy of the executed construction contract.

SECTION 4.
CONSTRUCTION AND COMPLETION OF THE PROJECT

4.1 Permits and Fees and Notice to Proceed. Prior to the commencement of construction, Developer shall require that the contractor (i) has obtained all applicable permits to work in the right-of-way, and (ii) has paid all applicable fees for such permits. ACHD permits shall be issued at no charge. Developer acknowledges that this Agreement will not function as an ACHD permit to work in the public right-of-way.

4.2 Manner of Construction. Upon ACHD’s written approval of the construction contract, Developer shall provide for construction of the Project in compliance with the construction contract and with the customary requirements of ACHD, and shall diligently and continuously prosecute such construction to completion.

4.3 Change Orders to Contract. Developer shall obtain the written approval of ACHD before approving any change order in the construction contract if (i) the cost of the change order will exceed one percent (1%) of the original contract price; and/or (ii) the cumulative total of all previously approved change orders exceeds ten percent (10%) of the original contract price.

4.4 Inspections. Inspecting and testing of that portion of the Project within ACHD right-of-way and associated with the installation of the signal equipment shall be provided by ACHD at no charge to Developer and accomplished as required by and in accordance with ACHD standards.
4.5 Issuance of Certificate of Completion.

a. Upon completion of the construction of the Project, Developer shall furnish to ACHD the Project Engineer’s written certification that the Project is complete in accordance with the approved plans.

b. Within fifteen (15) days after delivery of the Project Engineer’s written certificate, ACHD shall either (i) accept the same or (ii) provide a written itemization of those matters it reasonably finds to be non-conforming, in which case Developer shall promptly cause the remediation of all non-conforming matters.

c. ACHD shall acknowledge its acceptance of the Project in writing as complete and issue a certificate stating that the project is complete (a “Certificate of Completion”) within fifteen (15) days after the later of (i) delivery of the Project Engineer’s certification to ACHD, or (ii) remediation of any non-conforming matters.

d. Within thirty (30) days after the issuance of the Certificate of Completion, Developer shall deliver to ACHD drawings for the Project, as-built, in electronic files in AutoCAD format.

4.6 Warranty. Upon issuance of the Certificate of Completion, Developer shall complete all paperwork necessary to assign to ACHD the contractor’s (2) two year warranty of the work and materials on the Project.

4.7 Representations and Warranties. Developer represents and warrants that upon completion of the Project, the Project shall be free and clear of all liens and encumbrances that were not created by or with the written consent of ACHD. Developer shall provide ACHD lien waivers from all contractors prior to ACHD payment of Reimbursable Project Costs.

SECTION 5.
PAYMENT OF PROJECT COSTS; FINAL ACCOUNTING AND SETTLEMENT

5.1 Payment of Project Costs. All Project Costs shall be paid and funded by Developer.

5.2 Payment of Reimbursable Project Costs. ACHD shall pay the Reimbursable Project Costs to Developer in the following manner:

a. Final Accounting. Within a reasonable period after issuance of the Certificate of Completion, Developer shall submit to ACHD a final accounting of the Reimbursable Project Costs.
b. Agreement of Final Amount. Within fifteen (15) business days (3 weeks) after Developer’s submittal of the Reimbursable Project Costs, Developer and ACHD shall reach an agreement and acknowledge in writing the final amount of the Reimbursable Project Costs.

Payment of Reimbursable Project Costs. ACHD shall pay to Developer the following installments, until all Reimbursable Project Costs have been paid to Developer:

i. One Million dollars ($1,000,000) shall be subject to an Impact Fee Credit Agreement attached hereto as Exhibit B and made available within thirty (30) days after agreement as to the final amount of the Reimbursable Project Costs.

ii. The remaining balance of the Reimbursable Project Costs up to a maximum of One Million dollars ($1,000,000) following the payment in i. above, shall be paid within thirty (30) days after agreement as to the final amount of the Reimbursable Project Costs.

iii. The remaining balance of the Reimbursable Project Costs exceeding the payments made in i. and ii. above, shall be paid no later than October 31, 2018.

c. No Obligation for Reimbursement. ACHD shall have no obligation under the terms and provisions of this Agreement to make any payments towards Reimbursable Project Costs if the Project is not completed by Developer and ACHD has not issued the Certificate of Completion.

d. Option to Accelerate Payment. ACHD may at its sole discretion make reimbursement payments to Developer other than those required to be made by Section 5.2(c), thereby accelerating reimbursement of the Reimbursable Project Costs. Any such additional payments shall not be a waiver of the requirement to make future payments required by Section 5.2(c) until all Reimbursable Project Costs have been reimbursed to Developer.

e. No Interest. No interest shall accrue on Reimbursable Project Costs.

SECTION 6. REMEDIES

6.1 Default by Developer. In addition to such other remedies at law or in equity for default that ACHD may have, in the event Developer fails or neglects to perform its obligations under the terms and provisions of this Agreement in the time and manner required herein, ACHD may withhold any reimbursement due to Developer hereunder until such defaults are corrected to the satisfaction of ACHD.
6.2 Default by ACHD. In the event ACHD fails or neglects to perform its obligations under the terms and provisions of this Agreement in the time and manner required herein, Developer shall be entitled to all remedies available at law or in equity.

6.3 Mediation and Arbitration. ACHD and Developer shall attempt in good faith to settle by negotiation any controversy or claim arising out of or relating to this Agreement, or the breach thereof (the “Dispute”). If no settlement can be reached, the Dispute shall upon the request of either party be submitted for mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Rules. If mediation is not requested or is terminated, such Dispute shall upon the request of either party be settled by arbitration administered by the AAA under its arbitration rules most relevant to the nature of the Dispute, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

   a. Any mediation and arbitration shall be administered in Boise, Idaho, or at the place of the AAA regional office nearest thereto. All costs of mediation and arbitration shall be allocated between ACHD and Developer in a manner consistent with the provisions of Section 6.4 below. The arbitrator shall issue an opinion in support of the award if requested by either party.

   b. The provisions hereof shall be governed by the Federal Arbitration Act and, where applicable, the Idaho Uniform Arbitration Act. Either party may seek judicial relief if arbitration is not requested, or otherwise in a manner compatible with such arbitration.

6.4 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, or to recover damages for the breach of this Agreement, or to resolve any disagreement in interpretation of this Agreement, or to obtain assistance in any arbitration, 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.

SECTION 7.
OTHER PROVISIONS

7.1 Notices. Any notice required to be given hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) four (4) days after having been sent by prepaid registered or certified mail, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be to the respective parties to this Agreement at the following addresses:
Ada County Highway District  
Attn: Gary Inselman, Development Services Manager  
3775 N. Adams Street  
Garden City, Idaho 83714-6499  
Telephone: (208) 387-6180  
E-Mail: ginselman@achdidaho.org

Challenger Development, Inc.  
Attn: Adair Koltes  
1977 E. Overland Road  
Meridian, ID 83642  
Telephone: (208) 288-5560  
E-Mail: adairk@cbhhomes.com

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

7.3 **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.

7.4 **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.

7.5 **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 ACHD and each of the parties comprising Developer.

7.6 **Headings.** The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

7.7 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns.

7.8 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

DEVELOPER:

CHALLENGER DEVELOPMENT, INC.

By ____________________________
Name: Corey Barton
Its: President

ACHD:

ADA COUNTY HIGHWAY DISTRICT

By ____________________________
Name: Kent Goldthorpe
Its: Commission President

Exhibits
Exhibit A  ACHD QC-QA Procedure
Exhibit B  Impact Fee Credit Agreement IFCA16-0001
Add the following:

Ada County Highway District Quality Control and Quality Assurance Procedure

**Definitions**

**Quality Assurance (QA)** is defined as the process or set of processes used to measure and assure the quality of a product and/or workmanship. This encompasses ACHD’s oversight of the Developer’s/Contractor’s processes and materials. This includes review of the inspector, sampler, tester and laboratory qualifications (per ACHD Independent Assurance Program defined below); verifying the results of the quality control and process control testing; and inspecting for conformance to plans and specifications.

**Quality Control (QC)** is defined as the actions necessary to produce quality workmanship and materials. QC includes, but should not be limited to, inspection of the production and placement operations, quality control and process control testing and inspection of the finished product. QC is the responsibility of the Developer/Contractor. No separate payment will be made for this work. If quality control testing is not being performed at the required frequency, ACHD may stop production of work until the tests are supplied, or ACHD determines the work can proceed.

**Quality Control Testing and Process Control Testing** are defined as the testing and inspections conducted by the Developer/Contractor to determine if the construction materials have been produced and placed in compliance with the project specifications and applicable standards. Process control testing is conducted to demonstrate that the construction materials being produced and used continue to meet the requirements for the product.

**Independent Assurance Program (IAP)** is the process provided by ACHD, through trained and certified staff, to ensure that all testing is performed correctly and testing equipment is functioning and calibrated properly.

**Acceptance** is determined by the QA test results, in combination with the assurance that the Developer/Contractor has satisfied the specification requirements for materials quality and workmanship, with the exception of Superpave Hot Mix, as specified below. In addition to the specified testing results, visual inspection of the end product is also taken into consideration in
determining acceptance. Acceptance will be determined by ACHD. All samples required for QA testing will be supplied by the Developer/Contractor to ACHD. Prior to obtaining a sample for QA testing, ACHD shall be notified of when and where the sample will be taken from. ACHD will determine if it needs to witness the obtaining of the QA sample. Superpave Hot Mix acceptance shall be based on ACHD’s supplement to the ISPWC Section 814 under Part 4.2.

**Construction Testing and Inspection Responsibilities**

**Quality Control**

A. The Developer/Contractor shall be responsible for the Quality Control of all construction processes and materials quality. The Developer/Contractor will be responsible for quality throughout the construction process. Therefore, the Developer/Contractor must ensure that the materials and workmanship provided by themselves, Subcontractors, Suppliers, and Producers meet all pertinent specifications. All tests listed under Quality Control in the Minimum Testing Frequency Table are required for quality control, however only tests listed as Acceptance shall be used in determining pay.

B. The Quality Control laboratory must be approved by the Idaho Transportation Department. All testing personnel and facilities used by the Developer/Contractor must be currently certified by the Western Alliance for Quality Transportation Construction (WAQTC) and by the ACHD Independent Assurance Program. All test results must be supplied to ACHD the next working day after the test was performed. All Quality Control tests will be supplied to ACHD directly from the lab performing the tests. Tests results shall have the ACHD project/permit number listed and be sequential.

C. Quality Control Testing must occur in a random frequency and at a minimum, at the intervals specified in the table provided in the corresponding ISPWC sections. The Developer/Contractor shall determine the random locations. Upon request, documentation must be supplied showing how the random numbers/locations were determined by the Developer/Contractor. All random sampling for ACHD will be done by the Developer/Contractor and witnessed by an ACHD representative.

D. For gradation testing by the Developer/Contractor during production, each sample size shall be taken per AASHTO T2, except the sample size shall be doubled. The sample obtained shall be split in accordance with AASHTO T248, and half of it shall be marked with an ID number and tested by the Developer/Contractor. The other half of the sample shall be sealed in a canvas sack or plastic bucket, and marked with the ID number, stored in a weather protected container, and reserved for use in retesting if needed. Material shall be retained until written notification is given by ACHD that it can be discarded.

E. Acceptance, gradation, binder content and volumetrics for plant mix pavement and/or Superpave Hot Mix asphalt shall be performed on the loose mix sampled from the roadway, haul unit, or an approved sampling method at
the Hot Plant. At the start of each project the location for sampling shall be determined by ACHD and all samples for the project shall be obtained from that determined location. The hot mix sample used for asphalt binder content, gradation and volumetric testing shall be doubled in size. The sample shall be split in accordance with AASHTO R47 and half of the sample shall be used for the appropriate testing. The other half of the sample shall be sealed in a box, marked with the sample ID number, stored in a weather protected enclosure, and reserved for use in retesting if needed. Material shall be retained until written notification is given by ACHD that it can be discarded.

Quality Assurance

A. ACHD shall oversee the Developer's/Contractor's fulfillment of the QC requirements, and independently verify that the QC test results being submitted by the Developer/Contractor are representative of the workmanship and product quality. ACHD will also be responsible for determining general project acceptance based on conformance to the approved plan and specifications.

B. ACHD will perform random Quality Assurance testing at the intervals specified in Minimum Testing Frequency table.

C. Acceptance of material will be based on the Quality Assurance test performed by ACHD. If no QA test is performed, acceptance will be based on the QC tests results and inspections as determined by ACHD.

D. ACHD will perform random inspections of material storage and handling practices.

Dispute Resolution

A. The dispute resolution process is to resolve differences between the Developer/Contractor and ACHD when a disagreement regarding the test results occurs.

B. When a failing QA test occurs, production may be suspended until the differences are resolved and ACHD is satisfied.

C. ACHD may run one or more tests of the split material from the QC process to help resolve differences.

D. When ACHD and the Developer/Contractor are unable to resolve the differences, a Third Party prequalified independent lab shall be brought in to verify testing.

E. ACHD will hire the Third Party independent lab. If ACHD tests are found to coincide with the independent lab, ACHD will not grant additional contract time due to any delays in production and the Developer/Contractor shall bear the costs associated with the Third Party resolution. Likewise, if the Developers/Contractors tests are found to coincide with the independent lab,
ACHD will bear the costs associated with Third Party resolution and will grant additional time for any delay caused by this additional testing.

F. For hot mix density dispute testing, cores shall be obtained by the Third Party from the same locations as the nuclear gauge tests.

Independent Assurance Program

A. ACHD practices the standards of the Western Alliance for Quality Transportation Construction (WAQTC).

B. ACHD Independent Assurance personnel may observe testers and verify that the equipment and techniques used for the required testing are calibrated and performing accurately, per WAQTC. During construction, it may be necessary for an IAP representative to verify the reliability of the tester by witnessing sampling and testing, and by splitting samples and comparing results.

C. All independent testing laboratories to be used shall be pre-qualified by ACHD prior to construction. To request an inspection and certification, contact the ACHD Lab Coordinator at 387-6310 to schedule. Laboratories that are currently certified by the Idaho Transportation Department (ITD) can provide ACHD with their current certification as confirmation of qualification. In the event that the lab is ITD certified; a facility inspection by ACHD IAP personnel may still be required.

Price Adjustment for Non-Compliant Materials or Products

A. When material fails to meet the required specifications, they will be subject to a price adjustment or rejection. ACHD may also request a lengthened warranty period.

B. ACHD will, in its sole, discretion determine the price adjustment or rejection.

C. The determined price adjustment or rejection of material shall be applied to the quantity of material that is represented by the non-compliant test results, as outlined in the Minimum Testing Frequency table.

Minimum Testing Requirements

A. The requirements outlined herein are the established minimum acceptance requirements for materials used in standard applications and paid for under standard bid items. For special provision items, material used in non-standard, non-roadway, temporary applications, or small quantities of materials, alternative materials acceptance requirements will be determined as discussed herein or as specified in the contract documents, or as otherwise approved by ACHD. Material placed without appropriate testing shall be subject to a price deduction or rejected as determined by ACHD.
B. Minimum testing frequencies are included in the Minimum Testing Frequency table. The Developer/Contractor frequencies may only be altered by Change Order approved by ACHD. ACHD may elect to increase its own testing frequency at any time. Testing frequency should be increased when accepting material from newly developed sources or those with varying results.

C. Material source approval requirements are not listed in this document. All fill and aggregate material imported to the project must be obtained from ACHD or ITD approved materials sources.

D. Based on inspection and without regard for testing frequency, ACHD may isolate and reject obviously defective material.

E. When the material is not listed in the Minimum Testing Frequency table and not identified in the ISPWC, acceptance shall be determined by ACHD.

F. When the material is required by the Contract to meet a given specification, such as ASTM or AASHTO, acceptance of material will, at a minimum, require a manufacturer’s certification. A partial list of such material is outlined in the List of Miscellaneous Material Accepted on the Basis of Manufacturer’s Fabricator’s Certification.

Small Quantities

A. ACHD may accept small quantities of certain materials without sampling and testing. The determination to accept materials using this provision rest solely with ACHD.

B. The following are not eligible for small quantity acceptance:
   i. Concrete with a specified strength of greater than 3000 psi.
   ii. Paving on the roadway with quantities above 100 ton.

C. Materials may be accepted as a small quantity if the estimated quantity is less than the minimum QC testing frequency. The small quantity exception may be used on pavement items such as; small patches, utility repairs, pavement placed outside the traveled way (driveways, approaches, mailbox turnouts, asphalt sidewalk and curb), and temporary pavement.

D. The minimum requirements that must be met for small quantities includes; approved sources, mix design, material certifications, inspection, and a core for density acceptance of mainline and intersection paving less than 100 tons.
# ACHD QC/QA Testing Frequency Table

~ All random sampling for ACHD will be done by the Developer/Contractor and witnessed by an ACHD representative ~

<table>
<thead>
<tr>
<th>Column</th>
<th>ISPWC</th>
<th>Material</th>
<th>Acceptance By/Test Required</th>
<th>Quality Control Contractor</th>
<th>Quality Assurance ACHD</th>
<th>Test Method</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>202</td>
<td>Subgrade (Natural Ground)</td>
<td>QA / Density (J)*</td>
<td>Minimum 1 test per 5000 SY</td>
<td>Observation</td>
<td>AASHTO T 310 Method B</td>
<td>Per 202.3.B.C.2</td>
</tr>
<tr>
<td>B</td>
<td>202</td>
<td>Embankment</td>
<td>QA / Density (J)*</td>
<td>Minimum 1 test per 350 SY per lift</td>
<td>Minimum 1 test per 1000 SY per lift</td>
<td>AASHTO T 310 Method B</td>
<td>Per 202.3.B.9.B</td>
</tr>
<tr>
<td>C</td>
<td>202</td>
<td>Embankment</td>
<td>QA / Gradation</td>
<td>Minimum 1 per 3000 ton</td>
<td>Minimum 1 per 7500 ton</td>
<td>AASHTO T 27</td>
<td>Per 202.3.B.C.2</td>
</tr>
<tr>
<td>D</td>
<td>204/306</td>
<td>Trenches</td>
<td>QA / Density (J)*</td>
<td>Minimum 1 per 300 feet for each lift. Minimum 1 per lift for transverse trenches.</td>
<td>Minimum 1 per 1000 feet. Minimum 1 for every 3 transverse trenches.</td>
<td>AASHTO T 310 Method B</td>
<td>Per Section 306</td>
</tr>
<tr>
<td>E</td>
<td>305</td>
<td>Bedding Type I,II,III</td>
<td>QA / Gradation Density</td>
<td>Minimum 1 per 3000 ton</td>
<td>Minimum 1 per 7500 ton</td>
<td>AASHTO T 27 AASHTO T 310 Method B</td>
<td>Per 305.2.8 &amp; 305.3.10</td>
</tr>
<tr>
<td>F</td>
<td>703</td>
<td>Concrete (Fine Aggregates)</td>
<td>QA / Gradation</td>
<td>Each 1000 CY of concrete placed</td>
<td>Each 3000 CY of concrete placed</td>
<td>AASHTO T 11 AASHTO T 27</td>
<td>Per 703.2.1.D.5</td>
</tr>
<tr>
<td>G</td>
<td>703</td>
<td>Concrete (Coarse aggregates)</td>
<td>QA / Gradation</td>
<td>Each 1000 CY of concrete placed</td>
<td>Each 3000 CY of concrete placed</td>
<td>AASHTO T 27</td>
<td>Per 703.2.1.E.4</td>
</tr>
<tr>
<td>H</td>
<td>703</td>
<td>Concrete (specified strength of 3500 psi or greater)</td>
<td>QA / Slump Air Content</td>
<td>Test for slump &amp; air on first truck then for every 100 CY of each class of concrete placed</td>
<td>Minimum 1 per 300 CY of each class of concrete placed</td>
<td>AASHTO T 119 AASHTO T 152</td>
<td>Per Section 703</td>
</tr>
<tr>
<td>I</td>
<td>703</td>
<td>Concrete (specified strength of 3500 psi or greater)</td>
<td>QA / Compressive Strength</td>
<td>Minimum one (1) set per 100 CY of each class of concrete placed; or one (1) per day, whichever frequency is greater</td>
<td>Minimum one (1) set per 300 CY of each class of concrete placed; or one (1) per day, whichever frequency is greater</td>
<td>AASHTO T 22 AASHTO T 23</td>
<td>Each set consists of (2) 28-day and (1) 7-day cylinders. Make the cylinders from loads that are tested for slump, air, etc.</td>
</tr>
<tr>
<td>J</td>
<td>703</td>
<td>Concrete (specified strength of 3000 psi or less)</td>
<td>QA / (if applicable) Slump Air Content</td>
<td>Test for slump &amp; air on first truck then for every 100 CY of each class of concrete placed</td>
<td>Minimum 1 per 300 CY of each class of concrete placed</td>
<td>AASHTO T 119 AASHTO T 152</td>
<td>Per Section 703</td>
</tr>
</tbody>
</table>
# ACHD QC/QA Testing Frequency Table

All random sampling for ACHD will be done by the Developer/Contractor and witnessed by an ACHD representative.

<table>
<thead>
<tr>
<th>Column</th>
<th>ISPWC</th>
<th>Material</th>
<th>Acceptance By/Test Required</th>
<th>Quality Control Contractor</th>
<th>Quality Assurance ACHD</th>
<th>Test Method</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>K</td>
<td>801</td>
<td>Uncrushed Aggregates</td>
<td>QA / Gradation (2)* SE</td>
<td>Minimum 1 per project</td>
<td>Minimum 1 per project</td>
<td>AASHTO T 11 AASHTO T 27 AASHTO T 176 (Method 2)</td>
<td>Per 801.2.2</td>
</tr>
<tr>
<td>L</td>
<td>801</td>
<td>Uncrushed Aggregates</td>
<td>QA / Density (1)*</td>
<td>1 test per 500 linear feet of roadway for each lift, based on two travel lanes</td>
<td>1 test per 1000 linear feet of roadway for each lift</td>
<td>AASHTO T 310 Method B</td>
<td>Per 202.3.8</td>
</tr>
<tr>
<td>M</td>
<td>802</td>
<td>Crushed Aggregates</td>
<td>QA / Gradation SE Fractured Face (5)*</td>
<td>Minimum 1 per 3000 ton or 1 per project, whichever frequency is greater</td>
<td>Minimum 1 per 5000 ton</td>
<td>AASHTO T 11 AASHTO T 27 AASHTO T 176 (Method 2) TP 61</td>
<td>Per 802.2.2</td>
</tr>
<tr>
<td>N</td>
<td>802</td>
<td>Crushed Aggregates</td>
<td>QA / Density</td>
<td>1 test per 500 linear feet of roadway based on two travel lanes.</td>
<td>1 test per 1000 linear feet of roadway</td>
<td>AASHTO T 310 Method B</td>
<td>Per 202.3.8</td>
</tr>
<tr>
<td>O</td>
<td>803</td>
<td>Plant Mix/Superpave Aggregates (Cold Feed) (5)*</td>
<td>QC / Gradation SE Fractured Face</td>
<td>One (1) sample at start of project, then 1 test per each 3000 tons.</td>
<td>1 test per project</td>
<td>AASHTO T 11 AASHTO T 27 AASHTO T 176 (Method 2) TP 61</td>
<td>Per 803.2.2</td>
</tr>
<tr>
<td>P</td>
<td>805</td>
<td>Plant Mix / Superpave performance grade binder</td>
<td>QA / Sampling Presence of Anti-Strip</td>
<td>One sample for each shift that hot mix is produced and supplied to ACHD for testing</td>
<td>Additional samples taken at ACHD discretion.</td>
<td>AASHTO T 40 Idaho IT 99 (color only)</td>
<td>One sample consists of three (3) one-quart metal cans.</td>
</tr>
<tr>
<td>Q</td>
<td>810</td>
<td>Plant Mix Pavement / Superpave HMA SP-1 and SP-2</td>
<td>QA / Sampling Asphalt Content Gradation</td>
<td>One (1) sample per 750 tons or one (1) sample per day, whichever frequency is greater</td>
<td>Each 1500 Tons</td>
<td>AASHTO T 168 AASHTO T 308 AASHTO T 30</td>
<td>Per Section 810.3.13.B</td>
</tr>
<tr>
<td>R</td>
<td>810</td>
<td>Plant Mix / Superpave Recycled Asphalt Pavement (RAP)</td>
<td>QC / Sampling Asphalt Content Gradation</td>
<td>One (1) sample at start of project, then 1 test per each 5000 tons.</td>
<td>Additional samples taken at ACHD discretion.</td>
<td>AASHTO T 168 AASHTO T 308 AASHTO T 30</td>
<td>Per 810.3.1.A.11.e</td>
</tr>
<tr>
<td>Column</td>
<td>ISPWC</td>
<td>Material</td>
<td>Acceptance By/Test Required</td>
<td>Quality Control Contractor</td>
<td>Quality Assurance ACHD</td>
<td>Test Method</td>
<td>Requirement</td>
</tr>
<tr>
<td>--------</td>
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<td>-------------</td>
</tr>
<tr>
<td>S</td>
<td>810/814</td>
<td>Plant Mix Pavement / Superpave Hot Mix Asphalt</td>
<td>QC / Correlating density gauge (Cores)</td>
<td>Densometers must be correlated to cores on first day of paving, design change or change in underlying material. Minimum 3 cores for quantities up to 750 tons, minimum 5 cores over 750 tons that day. ((3) \times (4) \times (6)^*)</td>
<td>Densometers must be correlated to cores on first day of paving, design change or change in underlying material. Minimum 3 cores for quantities up to 750 tons, minimum 5 cores over 750 tons that day. ((3) \times (4) \times (6)^*)</td>
<td>AASHTO T 166 Method C</td>
<td>Compare core density results with the corresponding gauge reading to attain a correlation.</td>
</tr>
<tr>
<td>T</td>
<td>810/814</td>
<td>Plant Mix Pavement / Superpave Hot Mix Asphalt</td>
<td>QA / Asphalt depth (Cores)</td>
<td>One (1) core every 750 tons or two (2) cores per road section, whichever is greater. Maximum 4 inch diameter ((4)^*)</td>
<td>Additional samples taken at ACHD discretion.</td>
<td>NA</td>
<td>Per 814.6.1</td>
</tr>
<tr>
<td>U</td>
<td>810/814</td>
<td>Plant Mix Pavement / Superpave Hot Mix Asphalt</td>
<td>QC / Density using correlated nuclear gauge</td>
<td>One (1) test every 100 ton of HMA paved</td>
<td>One (1) test every 300 ton of HMA paved</td>
<td>WAQTC TM-8</td>
<td>No greater than 96% and no less than 92% of the Max. Theo. Density from JMF</td>
</tr>
<tr>
<td>V</td>
<td>814</td>
<td>Superpave Hot Mix Asphalt SP-3 through SP-6</td>
<td>CONTROL Grading VFA DP QC ACCEPTANCE / VA VMA</td>
<td>One (1) sample per 750 tons or one (1) sample per day, whichever frequency is greater</td>
<td>One (1) sample per 1500 tons</td>
<td>AASHTO T 168 AASHTO T 308 AASHTO T 30 AASHTO T 312 AASHTO T 165 AASHTO T 209 AASHTO T 166</td>
<td>Each sample must be at least 80 lbs - Results must meet Section 814.2.2</td>
</tr>
</tbody>
</table>

*(1)* When material is too granular to test, the compaction effort must be documented for acceptance, including equipment and roller passes. See 202.3.1.2.3.3.

*(2)* The test sample mass for sieve analysis will be determined using the nominal maximum size of the tested material according to AASHTO T 27, except the maximum test sample mass, after reduction, will not be greater than 65 lbs.

*(3)* Both parties will concord from some core locations. QA results will be for verification only \((\pm 0.0123)\).

*(4)* Contractor will provide ACHD with cores and fill at locations with a quick setting grad.

*(5)* If RAP is allowed, must meet gradation requirements after addition of RAP.
### List of Miscellaneous Material Accepted on the Basis of Manufacturer's or Fabricator's Certification

<table>
<thead>
<tr>
<th>Material Type</th>
<th>Acceptance Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bearing Pads and Plates</td>
<td>H-Beam Piles</td>
</tr>
<tr>
<td>Brick and Blocks, Masonry</td>
<td>Illumination Poles and Bases</td>
</tr>
<tr>
<td>Bridge Rail, Metal</td>
<td>Joint Sealants and Sealants</td>
</tr>
<tr>
<td>Cement</td>
<td>Liquid or Emulsified Asphalt</td>
</tr>
<tr>
<td>Concrete Admixtures</td>
<td>Metal Reinforcement</td>
</tr>
<tr>
<td>Concrete, Rapid Set</td>
<td>Paint (only small quantities less than 25 gallons (100L))</td>
</tr>
<tr>
<td>Delineators and Mileposts</td>
<td>Performance-Graded Asphalt Binder</td>
</tr>
<tr>
<td>Dowel Bars and Tie Bars for Concrete Pavement</td>
<td>Pipe</td>
</tr>
<tr>
<td>Dust Oil</td>
<td>Sewer (storm and sanitary) Manholes</td>
</tr>
<tr>
<td>Electrical</td>
<td>Signs and Posts</td>
</tr>
<tr>
<td>Epoxy</td>
<td>Steel</td>
</tr>
<tr>
<td>Epoxy Patch</td>
<td>Sheet</td>
</tr>
<tr>
<td>Fiber</td>
<td>Structural Bolts</td>
</tr>
<tr>
<td>Flyash</td>
<td>Timber (structural)</td>
</tr>
<tr>
<td>Geotextiles</td>
<td>Traffic Signal Poles and Mast Arms</td>
</tr>
<tr>
<td>Guard Rail and Posts</td>
<td></td>
</tr>
</tbody>
</table>
This IMPACT FEE CREDIT AGREEMENT ("Agreement") is made and entered into this 16th day of November, 2016, by and between Ada County Highway District ("ACHD"), a body politic and corporate of the State of Idaho, acting by and through its authorized representative, and Challenger Development, Inc. ("Developer").

Section 1. Definitions

(a) The term “Credit” shall mean the Impact Fee credit calculated and determined under this Agreement.

(b) The term “Deed” shall mean the form of deed attached hereto as Exhibit 1.

(c) The term “Impact Fee” shall mean a fee imposed by ACHD as a condition of development approval to pay for a proportionate share of the cost of System Improvements needed to service development as determined by the Impact Fee Ordinance.

(d) The term “Impact Fee Ordinance” shall refer to the Ada County Highway District Impact Fee Ordinance in effect on the date of this Agreement.

(e) The term “Individual Assessment Application” means the ACHD Individual Assessment Application form as set forth in ACHD policies and procedures that notifies ACHD of the Developer or Fee Payer’s intent to provide an Individual Assessment Submittal.

(f) The term “Individual Assessment Submittal” means the documentation required for an individual assessment as provided in the Impact Fee Ordinance.

(g) The term “Property” shall refer to the parcel of real property depicted on Exhibit A of the Deed.

(h) The term “Project” shall mean the development project described on Exhibit 2.

(i) The term “System Improvements” shall have the same meaning as set forth in the Impact Fee Ordinance.

(j) The term “Service Area” shall have the same meaning as set forth in the Impact Fee Ordinance.

Section 2. Recitals

2.1. Developer desires to build the Project.
2.2. ACHD is a single countywide highway district organized and existing under the laws of the State of Idaho, with the responsibility and jurisdiction and authority to construct and improve highways in Ada County, Idaho.

2.3. ACHD has passed the Impact Fee Ordinance, which provides a reasonable and fair formula or method under which the Impact Fee imposed does not exceed a proportionate share of the costs incurred by ACHD in the provision of System Improvements to serve the Project.

2.4. In the calculation of Impact Fees for the Project, the Impact Fee Ordinance provides that credit or reimbursement shall be given for the present value of any construction of System Improvements or contribution or dedication of land or money by the Developer for system improvements of the category for which the Impact Fee is being collected, including such System Improvements paid for pursuant to a local improvement district. Such credit or reimbursement shall be allowed only if (i) the proposed System Improvements are contained in ACHD's Capital Improvements Plan as impact fee eligible, and (ii) the Developer seeking the credit or reimbursement applies to ACHD in writing prior to breaking ground or otherwise commencing construction of the system improvements and (iii) the Developer waives and is estopped from asserting any individual assessment claim.

2.5. The parties by entering into this Agreement seek to establish (i) the value of any Impact Fee Credit, and (ii) the method by which such Impact Fee Credit will be provided.

Section 3. Impact Fee Credit

3.1 The Developer desires to reduce the amount of the Impact Fees due and owing by means of (1), the construction, funding, or contribution of system improvements as set forth in Section 3.2(A) below and/or (2) the grant and conveyance of real property as set forth in Section 3.2(B) below. The initials below indicate whether Section 3.2(A) and/or Section 3.2(B) are applicable:

<table>
<thead>
<tr>
<th>Applicability of Section 3.2(A) below: Construction, Funding, or Contribution of System Improvements</th>
<th>Applicability of Section 3.2(B) below: Grant and Conveyance of Real Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACHD Initials: _______</td>
<td>ACHD Initials: N/A</td>
</tr>
<tr>
<td>Developer Initials: _______</td>
<td>Developer Initials: N/A</td>
</tr>
</tbody>
</table>

3.2(A) Construction, Funding, or Contribution of System Improvements by Developer.

(1) The Developer agrees to construct, fund, or contribute certain System Improvements to ACHD as set forth on Exhibit 3. At Developer’s sole cost and expense, Developer shall construct, fund, or contribute the System Improvements in accordance with designs, plans and specifications approved by ACHD in advance and in writing, and in compliance with all applicable statutes, ACHD policies and standards, and
good engineering practices. During construction, Developer shall give ACHD reasonable notice and opportunity to inspect the same.

(2) The total present value of these System Improvements is set forth on Exhibit 3.

(3) The amount of the Credit attributed to the construction, funding, or contribution of the aforementioned System Improvements to the Impact Fee is set forth on Exhibit 3.

3.2(B) Grant and Conveyance of Real Property by Developer. The Developer agrees to grant and convey a parcel of real property (hereinafter “Property”) to ACHD, and ACHD agrees to acquire the Property from Developer in consideration of the establishment of a credit in favor of the Developer as hereinafter provided, and on the terms and conditions of this Agreement. The Property is located in Ada County, Idaho, which is more particularly described and depicted on Exhibit A to the Deed. Exhibit 4 sets forth (i) the total square footage of the Property, (ii) the market value per foot of the Property, (iii) the market value of the Property, and (iv) the amount of Credit provided by the grant and conveyance of the Property.

Section 4. Payment of Impact Fee and Impact Fee Credit

The Impact Fee Credit determined pursuant to either or both Section 3.2(A) and/or 3.2(B) above shall be applied as an offset against future Impact Fees on another eligible development in the same Service Area where the credit was originally generated. Such amount shall be expended within five (5) years from the date of this Agreement. The Developer’s failure to use this Credit within this time period will result in the expiration of the Credit. The parties agree that upon the expiration of the Credit, ACHD shall not have to reimburse the Developer for any unused sums remaining of the Credit. ACHD shall not pay any interest on any amount of the Credit. When the entire Credit has expired, been so applied, or paid over, Developer’s rights with respect to Impact Fee Credit shall terminate.

Section 5. Waiver and Estoppel of Individual Assessment Claim

Developer acknowledges and agrees that Idaho Code Section 67-8204 and Section 7312 of the Impact Fee Ordinance establishes ACHD policies and procedures for an individual assessment. Notwithstanding and in consideration for the terms and conditions of this Agreement, Developer hereby waives and is estopped from asserting any claim, right or entitlement to an individual assessment.

Section 6. Attorney’s 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’s fees.
Section 7. Notices.

Any and all notices given by either parties hereto shall be in writing and deemed delivered when either: (i) delivered personally, (ii) sent by fax by a fax system that confirms delivery to the other party at the fax telephone number set forth below, or (iii) deposited in the United States Mail, certified, return receipt requested, or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, addressed to the appropriate party at the address set forth below, or such other fax telephone number or mailing address as may be provided by written notice of such change given to the other in the same manner as provided in this section.

Developer:
   Challenger Development, Inc.
   Attention: Adair Koltes
   1977 E. Overland Road
   Meridian, ID 83642
   Telephone: (208) 288-5560
   E-mail: adairk@cbhhomes.com

ACHD:
   Ada County Highway District
   Attention: Gary Inselman
   3775 N. Adams Street
   Garden City, Idaho 83714-6499
   Phone (208) 387-6180
   E-mail: ginselman@achdidaho.org

Section 8. Applicable Law.

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

Section 9. Incorporation of Exhibits.

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

Section 10. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
Section 11. Time of Essence.

At all times provided for in this Agreement or in any other instrument or document incorporated herein or contemplated hereby for the performance of an act will be strictly construed, it being agreed that time is of the essence of this Agreement.

Section 12. Warranty of Authority to Execute.

11.1 The person(s) executing this Agreement on behalf of ACHD represent(s) and warrant(s) 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.

11.2 If Developer is not a natural person, the person(s) executing the Agreement on behalf of Developer represent(s) and warrant(s) due authorization to do so on behalf of Developer, and that upon execution of this Agreement on behalf of Developer, the same is binding upon, and shall inure to the benefit, of Developer.

Section 13. Counterparts.

This Agreement may be executed in two counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument.

[Rest of this page intentionally left blank.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the
day and year first above written.

DEVELOPER:

Challenger Development, Inc.

________________________________________
Name:  Corey Barton
Its:  President

ACHD:

________________________________________
By: Kent Goldthorpe
Its: Commission President
Exhibit 1

Deed

N/A
Exhibit 2

Project

ACHD Project Number: CDA16-0005

Project Description: the extension of Orchard Street for approximately 6,350 feet as a minimum 40 foot rural arterial street section from Gowen Road south to Lake Hazel Road extended; and the extension of Lake Hazel Road for approximately 4,760 feet as a minimum 40 foot rural arterial street from approximately 640-feet east of Cole Road to Orchard Street extended.
Exhibit 3

System Improvements Contributed by Developer

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orchard St and Lake Hazel Road Extensions</td>
<td>1</td>
<td>LS</td>
<td>$2,400,000</td>
<td>$2,400,000</td>
</tr>
</tbody>
</table>

Total present value of System Improvements: $2,400,000

Total amount of Credit attributed to the construction, funding, or contribution of the System Improvements: $1,000,000
Exhibit 4

A. Total square footage of the Property: N/A
B. Present value per foot of the Property: N/A
C. Present value of the Property: N/A
D. Amount of Credit provided by the conveyance of the Property: N/A