

INTERAGENCY AGREEMENT FOR:
WALLING CREEK CHANNEL AND DEBRIS REMOVAL
BARBER VALLEY DRIVE EXTENSION BRIDGE

THIS INTERAGENCY AGREEMENT FOR BRIDGE MAINTENANCE (“Agreement”) is made and entered into this _____ day of _____, 2017, by and between the ADA COUNTY HIGHWAY DISTRICT, a highway district organized under the laws of the State of Idaho (“ACHD”), and the CITY OF BOISE, a municipal corporation organized under the laws of the State of Idaho (“CITY”).

RECITALS

WHEREAS, 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;

WHEREAS, CITY is a municipal corporation organized and operating pursuant to Idaho Code Title 50, as amended and supplemented with jurisdiction, authority and police power to regulate and control municipal activities within its boundaries;

WHEREAS, 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; and

WHEREAS, on June 18, 2008, the ACHD Commission approved a preliminary plat for the Barber Valley Subdivision submitted by the Brighton Corporation (“Applicant”); and

WHEREAS, ACHD’s approval of said preliminary plat was contingent upon compliance with certain enumerated items pertaining to the design and functionality of a proposed Barber Valley Drive Extension Bridge (“Bridge”) over Walling Creek; and

WHEREAS, the Bridge spans property owned and managed by CITY; and

WHEREAS, ACHD’s mitigation plan as part of the 404 permit with the Army Corps of Engineers and Flood Permit with CITY for the East Park Center Bridge requires that 2,200 cfs flows through the Walling Creek channel; and

WHEREAS, ACHD’s approval of said preliminary plat was contingent upon the applicant demonstrating to the District that flows of 2,200 cfs will pass through the Walling Creek channel post development; and

WHEREAS, neither Applicant nor CITY has provided a vegetation plan for the area between the Boise City Greenbelt crossing and the roadway crossing, as required by ACHD; and

WHEREAS, in lieu of providing and complying with an approved vegetation plan and demonstrating the Walling Creek channel can pass flows of 2,200 cfs, CITY has offered to assume responsibility for debris removal along the Bridge and the responsibility for the channel to pass 2,200 cfs; and

WHEREAS, ACHD is willing to accommodate CITY'S request subject to the terms, conditions and obligations set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. ACHD SHALL:

- a. Inspect, maintain, repair and replace the Bridge following its acceptance by ACHD.

2. CITY SHALL:

- a. Inspect the Walling Creek channel near the Bridge on a quarterly basis.
- b. Remove any and all debris accumulating at or near the piers of the Bridge. Debris is defined as vegetative material from the channel upstream of the Bridge; as well as any material carried downstream in the Walling Creek channel from the Boise River to the Bridge and deposited within the ACHD right-of-way and Bridge easement areas.
- c. Remove any and all tree and shrub type vegetation that may sprout in the future within the ACHD right-of-way and easement areas for the Bridge.
- d. Report to ACHD the results of the inspections and the size and nature of debris removed annually.
- e. Be responsible for the Walling Creek channel to pass the required flows of 2,200 cfs.
- f. Indemnify, save harmless and defend regardless of outcome, ACHD from expenses and against suits, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any negligent acts by CITY or CITY'S officers, employees, agents or contractors while acting within the course and scope of their employment, which arise from or which are in any way connected to this Agreement. Such indemnification hereunder by CITY shall in no event cause the liability of CITY for any negligent act to exceed the amount of loss, damages, or expenses of attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of ACHD. This duty to defend, indemnify and hold harmless is subject to the limitations of Idaho law, including Article VII Section 4, Idaho Constitution and Idaho Code Title 6 Chapter 9 (the Idaho Tort Claims Act), and to any other limitations set forth in the Agreement.

3. THE PARTIES HERETO FURTHER AGREE THAT:

- a. In the event CITY fails to adequately fulfill its obligation to remove debris and vegetation, ACHD may remove accumulated debris and vegetation within the ACHD right-of-way and easement areas, and CITY shall reimburse ACHD fully for all associated costs, provided that ACHD first gives CITY 10 days' notice and CITY fails to remedy such failure. In addition, in the event of an emergency, ACHD may immediately perform any and all debris and vegetation removal necessitated by such emergency, and CITY shall reimburse ACHD fully for all associated costs.
- b. In the event CITY fails to adequately fulfill its obligation for the Walling Creek channel to pass flows of 2,200 cfs at the Bridge, ACHD may take any actions reasonably necessary to restore such flows, and CITY shall reimburse ACHD fully for all associated costs, provided that ACHD first gives CITY 10 days' notice and CITY fails to remedy such failure. In addition, in the event of an emergency, ACHD may immediately perform any and all actions to restore flows of 2,200 cfs at the Bridge necessitated by such emergency, and CITY shall reimburse ACHD fully for all associated costs.
- c. In accordance with Idaho Code § 67-2332, the purposes, powers, rights and objectives of each of the parties are as set forth in the Recitals above. Each of the Recitals above is incorporated into the body of this Agreement.
- d. This Agreement may not be enlarged, modified, amended or altered except in writing signed by both of the parties hereto.
- e. All signatories to this Agreement represent and warrant that they have the power to execute this Agreement and to bind the agency they represent to the terms of this Agreement.
- f. Should either party to this Agreement be required to commence legal action against the other to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred in said action.
- g. Any action at law, suit in equity, arbitration or judicial proceeding for the enforcement of this Agreement shall be instituted only in the courts of the State of Idaho, County of Ada.
- h. This Agreement shall be binding upon and inure to the benefit of the personal representatives, heirs and assigns of the respective parties hereto.
- i. Nothing in this Agreement shall be construed to be an indebtedness or liability in violation of Article VIII, Section 3 of the Idaho Constitution.
- j. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.
- k. 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 the other in any manner by any representations, warranties, covenants or agreements except as specifically set forth herein.

- l. The promises, covenants, conditions and agreements herein contained shall be binding on each of the parties hereto and on all parties and all persons claiming under them or any of them; and the rights and obligations hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns.
- m. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.
- n. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit such party's right to enforce any provision or exercise any right. 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 CITY.
- o. The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- p. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same.
- q. The parties hereto agree that nothing herein contained shall be construed to create a joint venture, partnership or other similar relationship which might subject any party to liability for the debts and/or obligations of the others, except as otherwise expressly agreed in this Agreement.
- r. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.
- s. All parties have been represented by legal counsel, and no party shall be deemed to be the drafter of this Agreement for purposes of interpreting an ambiguity against the drafter.
- t. Time shall be of the essence for all events and obligations to be performed under this Agreement.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the day and year herein first written.

ATTEST:	ADA COUNTY HIGHWAY DISTRICT
By:	By:
Bruce Wong Director	Paul Woods President, Board of Commissioners
ATTEST:	CITY OF BOISE
By:	By:
Lynda Lowry Ex-Officio City Clerk	David Bieter Mayor

