

INTERAGENCY AGREEMENT FOR:
WATER AND SEWER CONSTRUCTION/ ROADWAY CONSTRUCTION
E Idaho Ave. Water & Sewer Main Replacement
 MERIDIAN PROJECT NO. 10567

THIS INTERAGENCY AGREEMENT FOR WATER AND SEWER CONSTRUCTION/ ROADWAY CONSTRUCTION ("Agreement") is made and entered into this _____ day of _____, 20____, by and between the ADA COUNTY HIGHWAY DISTRICT, a highway district organized under the laws of the State of Idaho ("DISTRICT" or "ACHD"), and the CITY OF MERIDIAN , a municipal corporation organized under the laws of the State of Idaho (" MERIDIAN " or "City"), regarding MERIDIAN Project no. 10567 .

RECITALS

WHEREAS, MERIDIAN 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 the City;

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, 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, MERIDIAN and ACHD desire to undertake a cooperative effort to incorporate into City's water and sewer construction project known as **WATER AND SEWER MAIN REPLACEMENT – E IDAHO AVENUE, N MAIN ST TO NE 6TH ST**, to include certain modifications or improvements to DISTRICT'S owned facilities on E. Idaho Avenue from N. Meridian Rd to NE 6th St. (collectively, "DISTRICT Roadway Improvements"), to be constructed pursuant to an agreement between City and the selected Contractor ("CONTRACT"); and

WHEREAS, MERIDIAN is willing to accommodate ACHD'S request by including the DISTRICT Roadway Improvements in the Project plans, subject to the terms, conditions and obligations set forth in this Agreement and so long as City receives assurances by the DISTRICT that it will fully reimburse City for all actual costs including, without limitation, any indirect costs and expenses that City incurs as a result of the additional work attributable to the modification or installation of the DISTRICT Roadway Improvements within the Project Boundaries; and

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

1. CITY SHALL:

- a. Be the party responsible for soliciting, receiving and opening of bids and for executing and administering the construction CONTRACT for the City Water and Sewer Improvements and DISTRICT Roadway Improvements referenced herein, which CONTRACT shall include, *inter alia*, a provision that all work required for the DISTRICT Roadway Improvements shall be performed in conformance with the most current edition of the Idaho Standards for Public Works Construction (ISPWC) and the most current DISTRICT Supplemental Specifications to the ISPWC. It is hereby specifically agreed that:
 - i. Adjustment of water valve boxes and covers to grade shall include reconstruction in conformance with ISPWC Section 404, and
 - ii. Adjustment of sewer manholes to grade shall include reconstruction in conformance with ISPWC Section 602.
- b. Provide DISTRICT with a complete set of combined bid documents for the City Water and Sewer Improvements and for the DISTRICT Roadway Improvements.
- c. Furnish DISTRICT with an abstract of all bids received, and obtain DISTRICT'S written concurrence with City's recommendation for award of the CONTRACT prior to making such award. DISTRICT'S concurrence shall specifically acknowledge that the DISTRICT Roadway Improvements are and shall be subject to the terms and conditions of this Agreement. If DISTRICT does not concur, City shall remove the DISTRICT Roadway Improvements and if necessary, rebid the Project. DISTRICT shall be responsible and shall reimburse City for any and all costs suffered by City attributable to the removal of the DISTRICT Roadway Improvements from the Project and if applicable, the rebidding of the Project.
- d. Include in the CONTRACT, a term providing that DISTRICT will have the right and authority to work directly with the Contractor to resolve any claims relating in any way to the DISTRICT Roadway Improvements and that any such claims will be reviewed, approved or denied by DISTRICT including enforcement of the two (2) year warranty period to be started at the date described in the final acceptance letter from DISTRICT.
- e. Coordinate with DISTRICT should any changes be made to City's portion of the CONTRACT or work pursuant thereto that does or may impact the DISTRICT Roadway Improvements.
- f. Make monthly progress payments and the final CONTRACT payment to the Contractor in conformance with the terms of the construction CONTRACT.

- g. Submit to DISTRICT a copy of each design consultant billing attributable to the DISTRICT Roadway Improvements if applicable and Contractor progress payment estimate, and the final CONTRACT payment estimate, as such estimates are approved by City after obtaining DISTRICT'S concurrence regarding DISTRICT'S portion of the CONTRACT, together with an invoice for DISTRICT'S share of the construction CONTRACT costs earned by and to be paid to the Contractor.
- h. At the conclusion of the Project, submit to DISTRICT written documentation of expenditures with an invoice for payment of all costs and expenses the City incurs, in addition to those provided under paragraph 1.g. above, as a result of the additional work attributed to the District Roadway Improvements within the Project Boundaries, including but not limited to, costs or changed conditions, plan errors and omissions, and delays attributable to design and/or construction of the DISTRICT Roadway Improvements.
- i. Indemnify, save harmless and defend regardless of outcome, DISTRICT from expenses and against suites, 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 the City Water and Sewer Improvements. 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 DISTRICT. 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.
- j. As applicable, provide for the reference and replacement of all pre-existing survey monuments within the Project.

2. DISTRICT SHALL:

- a. Provide establish the centerline or offsets and stationing for DISTRICT'S Roadway Improvements as well as the inspection, field survey and grade control required for the installation of all DISTRICT Roadway Improvements incorporated into the Project and modified and constructed under the CONTRACT and provide copies of appropriate tests and construction diaries to the City's Project Representative as designated by the City.
- b. Provide City with the special provisions if applicable, and stamped plans, bid quantities and an Engineers Estimate (or pursuant to Paragraph 1.g. pay City the actual cost if City's design consultant prepares the same) for the DISTRICT'S Roadway Improvements to be incorporated into the Project and included in the bid documents for the CONTRACT (all work required for the DISTRICT'S Roadway Improvements to be performed in accordance with the most current edition of the Idaho Standards for

Public Works Construction (ISPWC), the DISTRICT'S Supplemental Specifications to the ISPWC, and the DISTRICT'S Revisions to the Standard Specifications).

- c. Remit to City, within thirty-five (35) calendar days after the date of any invoice referenced in paragraph 1.g., all funds for which DISTRICT is responsible pursuant to the approved progress payment estimate and the final CONTRACT payment estimate.
- d. Remit to City, within thirty-five (35) calendar days after the date of invoice referenced in paragraph 1.j., all funds for which DISTRICT is responsible pursuant to this Agreement.
- e. Reimburse City five percent (5%) of DISTRICT'S construction costs attributable to the DISTRICT'S Roadway Improvements as payment toward the additional costs incurred by City, including overhead and benefits, and project administration costs which include but are not limited to: public advertisement of the Project, supplying bid plans, supplying construction plans, preparing and holding the preconstruction meeting, generating monthly pay estimates and paying the Contractor, preparing change orders, general construction project oversight, and maintaining construction project files.
- f. Reimburse City for mobilization, traffic control, flagging, detours and weekly meetings on a prorated basis. The prorated basis for the above items will be calculated using the percentage of DISTRICT'S project costs as they relate to the total project construction costs.
- g. Reimburse City for any additional costs to City over and above costs specifically enumerated herein, where such costs are attributable to the DISTRICT'S Roadway Improvements or to the removal of any or all items from the CONTRACT that are associated with the DISTRICT'S Roadway Improvements.
- h. Indemnify, save harmless and defend regardless of outcome, City from expenses and against suites, 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 DISTRICT or DISTRICT'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 the DISTRICT'S Roadway Improvements. Such indemnification hereunder by DISTRICT shall in no event cause the liability of DISTRICT 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 City. 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.
- i. Work directly with the Contractor to resolve any claims relating in any way to the DISTRICT'S Roadway Improvements; any and all such claims will be reviewed, approved or denied by DISTRICT and DISTRICT shall indemnify, save harmless and defend regardless of outcome, City from expenses and against suites, actions, claims

or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any and all such claims regardless of the outcome of DISTRICT'S efforts to resolve said claims with the Contractor.

3. THE PARTIES HERETO FURTHER AGREE THAT:

- a. 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.
- b. The amount to be reimbursed to City by DISTRICT for DISTRICT'S portion of the Project shall be based on the actual quantities of work acceptably performed and/or installed, as determined from field measurements made by DISTRICT, and paid for pursuant to the unit, and or lump sum prices, established in the CONTRACT.
- c. City shall obtain DISTRICT 'S approval prior to commencement of any change order work involving the DISTRICT'S Roadway Improvements.
- d. Prior to commencement of work by the Contractor, the parties will, together with the Contractor, inspect within the entire Project Boundaries for the purpose of reviewing the Project to locate any unstable areas and to resolve any items of concern or misunderstanding.
- e. This Agreement may not be enlarged, modified, amended, or altered except in writing signed by both of the parties hereto.
- f. 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.
- g. 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.
- h. 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.
- i. This Agreement shall be binding upon and inure to the benefit of the personal representatives, heirs and assigns of the respective parties hereto.
- j. Nothing in this Agreement shall be construed to be an indebtedness or liability in violation of Article VIII, Section 3 of the Idaho Constitution.
- k. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.

- l. 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.
- m. 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.
- n. 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.
- o. 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 DISTRICT and City.
- p. The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- q. 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.
- r. 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.
- s. 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.
- t. 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.
- u. Time shall be of the essence for all events and obligations to be performed under this Agreement. Without limiting the foregoing, in the event that DISTRICT does not timely comply with any of its obligations hereunder, City shall have no obligation whatsoever to incorporate, facilitate, and/or complete the DISTRICT'S Roadway Improvements, regardless of whether prior approval has been given by City to DISTRICT.

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	Alexis Pickering President, Board of Commissioners
ATTEST:	CITY OF CITY
By:	By:
Chris Johnson City Clerk	Robert Simison Mayor

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this _____ day of _____, 20__, before me, the undersigned, personally appeared _____ and BRUCE WONG, President of the Board of Commissioners and Director respectively of the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for and on behalf of said body.

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

Notary Public for Idaho
Residing at _____, Idaho
My commission expires:

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this _____ day of _____, 20__, before me, the undersigned, _____ personally appeared _____ and _____, Mayor and City Clerk respectively of _____ CITY _____, a municipal corporation, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for and on behalf of said corporation.

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

Notary Public for Idaho
Residing at _____, Idaho
My commission expires: