



MEMO TO CITY COUNCIL

Agenda Topic on the City Council Agenda

From: Miranda Carson, Comprehensive Associate Coordination Planner **Date:** October 18, 2022

Topic: Community Development: Cost Share Permit Cloverdale Rd, Victory Rd to Overland Rd

ACHD is designing future improvements for Cloverdale Road between Victory Road and Overland Road. The purpose of this project is to improve traffic flow and increase safety for all users.

General Description:

- Widen Cloverdale Road to two lanes in each direction, with a center turn lane.
- Construct curb and gutter and a detached 10-foot-wide multi-use pathway on both sides of the roadway for pedestrians and bicyclists.
- Install raised center medians to increase safety.
- The enhanced pedestrian crossing across Cloverdale Road at Muir Ride Drive will remain.
- Restripe the north leg of the Cloverdale Road and Overland Road intersection to convert the right turn only lane to a shared through/ right lane.
- Install an enhanced pedestrian crossing across Cloverdale Road at Peppermint Drive.

Per standard coordination ACHD and City staff prepared a Cost Share Permit. About 700 feet of this project, on the west side of Cloverdale adjacent to Movado subdivision, falls within the City boundaries. Street lights are the only component included in the agreement.

The Cloverdale Rd, Victory Rd to Overland Rd Cost Share Permit is attached for your review. After coordination with staff in Planning, Public Works, and Legal my recommendation is approval of this agreement.

**ADA COUNTY HIGHWAY DISTRICT
COST SHARE PERMIT**

| | | |
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|  | 3775 Adams Street Garden City, Idaho 83714 Phone (208) 387-6280 Facsimile (208) 387-6289 | ACHD Contact Person: Supervisor – Development Review Name: 3775 Adams Street Garden City Idaho 83714 Phone: (208) 387-6177 |
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|------------------------|---------------------------------|------------------------|
| Date of Permit: | ACHD Project No.: 521021 | Permit No.: 001 |
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Capitalized terms that are not defined in this Permit shall have the meanings given to them in the ACHD Cost Share Ordinance No. 215.

I. PERMITTEE INFORMATION

| | |
|-----------------------------------|---|
| This permit is granted to: | Partnering Agency Contact Person: |
| City of Meridian | |
| | |
| | Miranda Carson Phone: 208-489-0319 Email: mcarson@meridiancity.org |

II. ROAD PROJECT AND APPROVED NON-TRANSPORTATION COMPONENTS

Name/Location of ACHD Road Project:
 Cloverdale Road, Victory Road to Overland Road.
 ACHD Project 521021 as depicted in the project plans attached hereto and incorporated herein as Exhibit A.

Approved Non-Transportation Components:

Pursuant to this Permit, ACHD authorizes, and, as a condition of issuing this Permit, requires, the following Non-Transportation Components:

1) Design, Construction, and Perpetual Maintenance of additional light poles, control cabinet and conduit (2” conduit from the Idaho Power connection point to the control cabinet and then 1” conduit from the control cabinet) within right of way of Cloverdale Road between Victory Road to Overland Road between stations 36+50.00 and 43+50.00, as depicted on Exhibit B. ACHD authorizes and requires the design,

construction, and perpetual maintenance of the additional light poles, control cabinet and conduit within the right of way between Victory Road to Overland Road between stations 36+50.00 and 43+50.00,

In accordance with Ordinance 215, the foregoing light poles, control cabinet and conduit are referred to as the “Non-Transportation Components.”

III. ACQUISITION OF RIGHT-OF-WAY OR REAL PROPERTY

Conditions of acquisition/contribution of right-of-way or real property by Partnering Agency and/or reimbursement to ACHD by Partnering Agency for said acquisition:

None. ACHD has already acquired or is in the process of acquiring the right-of-way necessary to incorporate the Non-Transportation Components into the Project. Therefore, the acquisition of real property is not required of the Partnering Agency and is not part of the Non-Transportation Components.

IV. DESIGN OF NON-TRANSPORTATION COMPONENTS

Party responsible for obtaining plans/design for Non-Transportation Components:

Partnering Agency shall be responsible for obtaining approval of the plans/designs of the Non-Transportation Components, which shall consist of designs for the additional light poles, control cabinet and conduit described in Section II.

Partnering Agency shall submit the plans/designs of the Non-Transportation Components and receive approval from ACHD as to the plans/designs prior to installation.

If Partnering Agency is responsible for providing plans/design, deadline for submitting plans/designs to ACHD for approval:

Partnering Agency shall be solely responsible for all design costs for the Non-Transportation Components, if any. Partnering Agency shall receive no credits in connection with the design costs for the Non-Transportation Components.

Additional conditions: All designs/plans submitted by Partnering Agency must comply with (i) established engineering standards, including the Idaho Standards for Public Works Construction (ISPWC); (ii) the American Association of State Highway and Transportation Officials (“AASHTO”); (iii) the Cost-Share Ordinance No. 215; (iv) all adopted ACHD rules, regulations, and policies; and (v) all state and federal laws. No designs shall be considered final until they are approved in writing by ACHD. Any modifications to the deadlines set forth above must be approved in writing by ACHD. By approving such design or construction of the Non-Transportation Components to the extent such Non-Transportation Components

were not designed or constructed by ACHD.

Allocation of design costs for Non-Transportation Components (including, if applicable, any credits provided to Partnership Agency and application of any federal funding) and for reimbursement, if applicable:

Partnering Agency shall be solely responsible for all design costs for the Non-Transportation Components, if any. Partnering Agency shall not be credited under this Permit for costs incurred for the design of the Non-Transportation Components.

V. CONSTRUCTION OF NON-TRANSPORTATION COMPONENTS

Description of construction work approved by ACHD to be completed by Partnering Agency (if applicable): (In addition to description, refer to designs and plans attached to this Permit as Exhibits, if applicable. If designs and plans are not complete at the time of issuance of this Permit, they must be approved in writing by ACHD and shall be incorporated into this Permit.)

Upon submission of the plans/designs of the Non-Transportation Components by Partnering Agency and approval by ACHD, Partnering Agency may proceed with construction or may elect to contract with ACHD for construction. If Partnering Agency performs the construction, it shall construct the improvements in accordance with the approved plans/designs.

Additional conditions: (1) Partnering Agency will not allow any liens to attach to any right-of-way, improvements, or any other property of ACHD as a result of any labor performed or materials supplied in connection with the construction of the Non-Transportation Components. (2) Partnering Agency shall be responsible for obtaining all permits required by ACHD in connection with any construction of the Non-Transportation Components. (3) Partnering Agency's construction shall not negatively impact ACHD's construction of the Transportation Components or ACHD's Road Project schedule in any way. (4) Any amendment to the designs and plans must be approved in writing by ACHD. (5) All construction of the Non-Transportation Components shall be in accordance with the designs/plans approved by ACHD. (6) All construction by Partnering Agency will comply with (i) established engineering standards including the Idaho Standards for Public Works Construction (ISPWC); (ii) the American Association of State Highway and Transportation Officials (AASHTO"); (iii) the Cost Share Ordinance No. 215; (iv) all adopted ACHD rules, regulations and policies; and (v) all state and federal laws.

If Partnering Agency is responsible for all or a part of the construction of the Non-Transportation Components:

- a. Date for submitting Partnering Agency's contractors and engineers to ACHD for approval: Not applicable due to the nature of the construction.**
- b. Date for submitting Partnering Agency's contractors' and engineers' estimates to ACHD for approval: Not applicable due to the nature of the construction.**
- c. Date for submitting Partnering Agency's contractors' and engineers' contracts to ACHD for approval: Not applicable due to the nature of the construction.**

Any modifications to the deadlines set forth above must be approved in writing by ACHD.

Allocation of construction costs for Non-Transportation Components, reconstruction costs of Transportation Components necessitated by the incorporation of Non-Transportation Components into the Road Project, ACHD construction, maintenance, administration, and overrun costs (including, if applicable, any credits provided to Partnering Agency and application of any federal funding), and time for reimbursement, if applicable:

Partnering Agency shall be solely responsible for all construction costs of the Non-Transportation Components, whether ACHD or Partnering Agency performs such construction. Partnering Agency shall receive no credits in connection with the construction of the Non-Transportation Components. If ACHD performs the construction of the Non-Transportation Components, then Partnering Agency shall reimburse ACHD for the actual costs of all materials used, the cost of the relocation of any utilities necessitated by installation of the Non-Transportation Components. Payment by Partnering Agency shall be made to ACHD within 30 days following submission of any invoice by ACHD to Partnering Agency identifying such charges.

Relocation of utilities to be completed by Partnering Agency (if any):

Partnering Agency shall be solely responsible for the cost of relocating any utilities required in connection with the placement, incorporation, or construction of the Non-Transportation Components.

Storm water provisions (if applicable):

The additional light poles, control cabinet and associated conduit lines as described in Section II within ACHD's project shall be designed so as to prevent storm water from accumulating and ponding.

Additional conditions: Upon a determination by ACHD that the incorporation into the Road Project of Partnering Agency's Non-Transportation Components will have an adverse effect on storm water quantity or quality, Partnering Agency shall be solely responsible for either mitigating or funding the mitigation of any such adverse effects in a means determined by or acceptable to ACHD.

Schedule for completion of Road Project:

At this time, ACHD's schedule for completion of the Transportation Components of the Road Project completion is unknown but it is estimated to start construction in 2026. The deadline for Partnering Agency's completion of the Non-Transportation Components is upon substantial completion of the Project.

VI. MAINTENANCE OF NON-TRANSPORTATION COMPONENTS

Maintenance requirements of Non-Transportation Components by Partnering Agency:

Partnering Agency shall be, and is hereby, granted a non-exclusive, revocable license to maintain, repair, and replace the Non-Transportation Components, subject to the provisions of this Permit and during the term of this Permit. This includes the perpetual maintenance, repair, and replacement of the Permanent Landscaping with the sidewalks.

Partnering Agency shall cause the Non-Transportation Components to be operated and maintained in good functioning order during the term of this Permit, in accordance with applicable law, the approved designs/plans, Partnering Agency's detached sidewalk and hardscape standards and specifications, and industry standards. This obligation includes, without limitation, grass and lawn care, pruning or replacement of gravel, trees, and shrubs, clean up of litter and debris, wee removal, and application for shrubs and trees, and groundcover, as applicable. Any replacement and/or installation by Partnering Agency of additional improvements shall be accomplished in accordance with designs, plans, and specification approved in advanced an in writing by ACHD, in its discretion, and as required to satisfy applicable laws, its policies, and good engineering and landscaping practices.

Additional conditions:

- 1. This Permit does not extend to Partnering Agency the Right to use any part of the ACHD Road Project area to the exclusion of ACHD for any use within its jurisdiction, authority, and discretion or of others to the extent authorized by law.*
- 2. In accessing any part of the Road project that has been accepted as an open public highway (as the term "highway" is defined in Idaho Code Section 40-109(5), Partnering Agency's authorized use is subject to the rights of the public to use the highway.*
- 3. The rights granted hereunder are subject to and subordinate to the rights of holders of easements of records and the statutory rights of utilities to use the right-of-way.*
- 4. This Permit does not preclude or impede the ability of ACHD to enter into or grant easements or license agreements allowing third parties to access the Road Project area, or the ability of ACHD to redesign, reconstruct, relocate, maintain, and improve the Road Project and right-of-way as it determines necessary, in its sole discretion.*
- 5. In consideration of the license granted by this Permit, Partnering Agency expressly covenants and agrees that the license granted herein is temporary and merely a permissive use of the ACHD right-of-way pursuant to the terms of this Permit. Partnering Agency assumes the risk that the license granted herein may be terminated before Partnering Agency has realized the economic benefit of the cost of installing, constructing, repairing, or maintaining the Non-Transportation Components, and by signing and accepting this Permit, Partnering Agency hereby waives and estops itself from asserting any claim, including damages or reimbursement, that the license is in any way irrevocable because partnering Agency has expended funds on the Non-Transportation Components and the Permit has not been in effect for a period sufficient for Partnering Agency to realize the economic benefit from such expenditures.*
- 6. In the event Partnering Agency fails to replace, repair, maintain, and care for the Non-Transportation Components, ACHD shall have the following remedies in addition to any other recovery in law or in equity, provided that ACHD first gives Partnering Agency 30 days' notice and Partnering Agency fails to remedy such failure: (i) ACHD may revoke this Permit; (ii) ACHD may*

replace, maintain, and/or care for the Non-Transportation Components, and Partnering Agency shall reimburse ACHD fully for all associated costs; (iii) ACHD may remove, alter, redesign, or reconstruct the Non-Transportation Components or any part of the ACHD Road Project (including without limitation the right-of-way), or in the case of landscaping, replace the Non-Transportation Components with hardscape, and Partnering Agency shall reimburse ACHD fully for all associated costs; and (iv) ACHD may refuse to issue any further Cost Share Permits or any other permits for future ACHD Road Projects until Partnering Agency complies with the conditions of the Permit. In addition, in the event of an emergency caused by Partnering Agency's failure to perform required maintenance, ACHD may immediately perform any and all emergency repairs or take other measures in connection with an emergency and Partnering Agency shall reimburse ACHD fully for all associated costs.

VII. TERM

Term of Permit:

This Permit shall be perpetual, until terminated or revoked pursuant to the provisions of this Permit.

Upon termination or revocation of this Permit, upon the request of ACHD, Partnering Agency will either, as directed by ACHD, (i) promptly remove the Non-Transportation Components and restore the underlying area to at least the condition present as of the date of this Permit repairing and restoring all portions of ACHD's right-of-way, personal property, and real property, if any, that are damaged during such removal activities; or (ii) reimburse ACHD for its cost of redesigning, replacing, and/or reconstructing the right-of-way or real property underlying the Non-Transportation Components. Any portion of the Non-Transportation Components that remain in ACHD right-of-way or on ACHD real property 90 days after termination or revocation of this Permit shall be deemed abandoned, and ACHD shall have the right to remove them or redesign, replace, and reconstruct the right-of-way or real property underlying them and charge all costs to Partnering Agency.

VII. ADDITIONAL PROVISIONS APPLICABLE TO PROJECT

Additional provisions:

This permit provides terms upon which the incorporation of the Non-Transportation Components into the Road Project is approved.

IX. GENERAL CONDITIONS OF PERMIT

1. This Permit is issued conditioned on the Partnering Agency's compliance with ACHD's Cost Share Ordinance No. 215, the terms and conditions of this Permit and all applicable ACHD policies, standards and specifications and all certifications made by the Partnering Agency's pursuant to this Permit.
2. This Permit is subject to the provisions of state and federal law and all ACHD Ordinance, including but not limited to the Cost Share Ordinance No. 215, in effect as of the date of issuance of this Permit and

those that may be adopted after the issuance of this Permit (the “Applicable Law”). In the event of any conflict between this Permit and Applicable Law, Applicable Law shall govern. In the event that any part of the obligations of the Partnering Agency or of ACHD in connection with this Permit or the Road Project are determined to be illegal or unenforceable by a court of competent jurisdiction, the remaining obligations of the Permittee set forth in this Permit shall still be applicable. Further amendments and restatements of the Cost Share Ordinance shall not be applicable to this Permit.

3. If any portion of the ACHD Road Project (including without limitation any portion of the right-of-way and ACHD personal property therein) is damaged as a result of Permittee’s action or inaction with regard to the construction, operation, and/or maintenance of the Fiber Optic Facilities or the failure or neglect to construct, operate, and/or maintain the Fiber Optic Facilities, then the Permittee shall, at its sole cost and expense, correct such deficiency and restore the area to the same condition it was in prior thereto, and if Permittee or its successors or assigns shall fail or neglect to commence such correction and restoration within twenty-four (24) hours of notification thereof, ACHD may proceed to do so, in which event Permittee shall reimburse ACHD for the costs and expenses thereof, including, without limitation, reasonable compensation for the use of staff and equipment of ACHD.
4. Partnering Agency shall be liable to ACHD for any and all damages, fines, fees, obligations to third parties, costs, expenses, attorney fees, or any other liabilities whatsoever directly resulting from the Partnering Agency’s failure to comply with any provision of this Permit and/or Cost Share Ordinance No. 215. Without limiting the foregoing in any manner, in the event Partnering Agency fails to comply with any provision of this Permit, then following any applicable notice and opportunity to cure set forth herein, ACHD shall have the right, in addition to all other rights and remedies elsewhere in this Permit, to redesign, replace, and/or reconstruct the Non Transportation Components and/or the right-of-way or real property underling the Non-Transportation Components, and in such event, Partnering Agency shall reimburse ACHD for all associated cost. The obligations in this Section shall survive the expiration, revocation, and/or cancellation of this Permit for any reason.
5. Partnering Agency may delegate any of its responsibilities hereunder to any third party so long as it gives prior written notice to ACHD that specifies in detail what responsibilities are being delegated and identifies the third party. Notwithstanding any delegation to a third party, the Partnering Agency shall remain and shall be ultimately responsible for the third party’s compliance with the terms of this Permit, and no delegation shall absolve Partnering Agency of any duties or obligations of this Permit in any way. In addition, Partnering Agency fully assumes all legal risks of determining whether any such delegation is property under applicable law and/or regulations, and shall not be absolved of any responsibilities under this Permit if it is unable to complete or maintain any such delegation for any reason.
6. Partnering Agency will protect, defend, indemnify, and hold ACHD and its officers, directors, employees, members, and agents harmless from and against any and all liability, suits, losses, damages, claims, actions, costs, and expenses of any nature, including court costs and attorney fees, arising from or out of any acts or omissions of the Permittee, its agents, or contractors related to or in connection with the Non-Transportation Components and the exercise of any privileges or performance of any obligations by the Partnering Agency pursuant to the terms of this Permit. Partnering Agency’s obligations in this Section shall survive the expiration, revocation, and/or cancellation of this Permit for any reason.

7. In the event the Non-Transportation Components will or may necessitate future maintenance, repair, relocation, or replacement that is not subject to this Permit, ACHD shall in its discretion issue Partnering Agency an amended or an additional Cost Share Permit to perform such work.
8. ACHD shall at all times have the right to relocate, reconstruct, remove, or redesign any and all improvements that are part of the Road Project. ACHD will use its best efforts to advise Partnering Agency of any anticipated actions within the Road Project that would be likely to cause a relocation, modification, or other adaptation of any of the Non-Transportation Components, and the parties, to the extent reasonably possible, shall agree to a priority schedule regarding the same and shall attempt to cooperate with respect to planning and coordination as related to any such relocation, modification, or other adaptation of any of the Non-Transportation Components. If ACHD ultimately determines that any part of the Road project must be relocated, reconstructed, removed, or redesigned, then Partnering Agency, at its sole cost and expense, shall be responsible for relocating, reconstructing, removing, or redesigning the Non-Transportation Components, as required by ACHD, which shall be accomplished by the Partnering Agency according to designs, plans, and specifications approved by ACHD in writing prior to any such work. Partnering Agency may also elect to remove all or a part of the Non-Transportation Components in lieu of any relocation, modification, or adaptation. Partnering Agency assumes any and all costs of itself and ACHD relating to any future relocation of the Non-Transportation Components.
9. ACHD shall at all times have the right to revoke this and any other Permit granted to the Partnering Agency to access the Highway or public right-of-way or real property. In addition, ACHD may immediately perform any and all emergency repairs or take other measures in connection with an emergency, in which case the Partnering Agency shall reimburse ACHD fully for all associated costs.
10. This Permit shall immediately be revocable and/or cancelable by ACHD by providing written notice to the Partnering Agency upon the occurrence of any of the following: (i) a determination by ACHD that any of the information submitted by the Partnering Agency in the Cost Share Application is false or inaccurate in any manner; (ii) a determination by ACHD that the Partnering Agency has failed to comply with any term or provision of this Permit; (iii) a determination by ACHD that the Partnering Agency has failed to replace, maintain, and/or care for the Non-Transportation Components, as required by the terms of this Permit. Except in an emergency situation, ACHD shall provide the Partnering Agency with thirty (30) days notice of the issue and an opportunity to comply prior to exercising such rights.
11. The issuance of this Permit shall in no way obligate ACHD to provide Partnering Agency with additional permits or rights, nor shall ACHD be obligation to utilize provisions or rights set forth in this Permit in connection with additional permits or rights that it may elect to provide to Partnering Agency in the future.
12. All exhibits and any addenda to this Permit are incorporated herein.
13. This Permit is conditioned upon the signature of ACHD and the Partnering Agency below.

SIGNATURES

This Cost Share Permit is issued by the Ada County Highway District on the date set forth above:

Ada County Highway District:

The person signing below represents that he or she has the authority on behalf of ACHD to issue this Permit and bind ACHD to the terms set forth herein.

By: Bruce S. Wong
Its: Director

Acceptance/certification by Permittee:

The person signing below represents that he or she has the authority on behalf of the Partnering Agency to accept and agree to the terms of this Permit and bind the Partnering Agency to the terms set forth herein.

By: Robert Simison
Its: Mayor

EXHIBITS