

TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2021 ("Effective Date"), by and between the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the state of Idaho ("ACHD"), and the CITY OF STAR, a municipal corporation of the state of Idaho ("STAR").

WITNESSETH:

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

SECTION 1. RECITALS.

1.1 ACHD owns and has exclusive jurisdiction over the public right-of-way located in the City of Star, Idaho, and related traffic signal cabinets particularly described and/or depicted on Exhibit "A" attached hereto (collectively, the "Cabinets").

1.2 STAR desires a license to place artwork wraps on certain ACHD owned Cabinets as part of its Communication Box Wrap Project and for limited purposes hereinafter set forth, and, for the consideration and on the terms and conditions hereinafter set forth, ACHD is willing to extend such license to STAR.

SECTION 2. LICENSE; LICENSE NOT EXCLUSIVE.

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

Installation, maintenance, repair and replacement of artwork wraps on Cabinets in the locations identified on Exhibit "A" attached hereto, subject to the following conditions:

- 1. STAR shall clean the Cabinets prior to installation or replacement of artwork wraps.***
- 2. All vents, locks, doors, etc. must not be impeded by the artwork wraps.***
- 3. The Cabinets must function as they do without any artwork wraps.***
- 4. STAR must contact ACHD immediately after installation or any maintenance, repair or replacement of artwork wraps is complete so that ACHD can confirm proper installation and functioning of the Cabinet.***
- 5. STAR must remove the artwork wrap immediately upon the request of ACHD which may be made in its sole discretion.***

2.2 This Agreement does not extend to STAR the right to use the Right-of-Way or the Cabinets (collectively referred to hereafter as "Right-of-Way") to the exclusion of

ACHD for any use within its jurisdiction, authority and discretion or of others to the extent authorized by law to use public right-of-way. If the Right-of-Way has been opened as a public Highway (as used in the Agreement, the term "Highway" is as defined in *Idaho Code* § 40-109(5)), STAR's Authorized Use is subject to the rights of the public to use the Right-of-Way for Highway purposes. STAR's Authorized Use is also subject to the rights of holders of easements of record or obvious on inspection of the Right-of-Way and statutory rights of utilities to use the public right-of-way. This Agreement is not intended to, and shall not, preclude or impede the ability of ACHD to enter into other similar agreements in the future allowing third parties to also use its public rights-of-way, or the ability of ACHD to redesign, reconstruct, relocate, maintain and improve its public rights-of-way and Highways as authorized by law and as it determines, in its sole discretion, is appropriate.

SECTION 3. CONSTRUCTION, OR INSTALLATION OF IMPROVEMENTS. Any installation maintenance, repair or replacement of artwork wraps by STAR in the Right-of-Way as permitted by the Authorized Use (the "Improvements") shall be accomplished in accordance with designs, plans and specifications approved in advance and in writing by ACHD as required to satisfy applicable laws, its policies and good engineering practices. In approving such plans and specifications, ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Improvements, and the responsibility therefor shall be and remain in STAR.

SECTION 4. WAIVER AND ESTOPPEL STATEMENT BY STAR. STAR acknowledges and agrees that the license granted herein is temporary, non-transferable and merely a permissive use of the Right-of-Way pursuant to this Agreement. STAR further acknowledges and agrees that it specifically assumes the risk that the license pursuant to this Agreement may be terminated before STAR has realized the economic benefit of the cost of installing, constructing, repairing or maintaining the Improvements, and STAR hereby waives and estops itself from asserting any claim that the license is in any way irrevocable because STAR has expended funds on the Improvements and the Agreement has not been in effect for a period sufficient for STAR to realize the economic benefit from such expenditures.

SECTION 5. TERM.

5.1 The term of this Agreement shall commence on the Effective Date, and shall continue until terminated by either party, with or without cause, which termination shall be effective following thirty (30) days' advance written notice of termination given to the other party.

5.2 If STAR defaults in the performance of any obligations incumbent upon it to perform hereunder, ACHD may terminate this Agreement and the rights extended to STAR hereunder at any time, effective at the end of thirty (30) days following the date ACHD shall provide written notice of termination to STAR, which notice shall specify such default(s). STAR shall have such thirty (30) day period to correct and cure the specified defaults, and if so corrected and cured, to the satisfaction of ACHD, this Agreement shall not be terminated but shall continue in full force and effect.

SECTION 6. FEE. There is no fee for STAR's Authorized Use of the Right-of-Way under this Agreement.

SECTION 7. MAINTENANCE; FAILURE TO MAINTAIN; RELOCATION OF UTILITIES.

7.1 At its sole cost and expense, STAR shall maintain the Improvements in good condition and repair and as required to satisfy applicable laws, the policies of ACHD and sound engineering practices. STAR shall have access over, across and under the Right-of-Way for the purposes of accomplishing such repair and maintenance.

7.2 If the Highway on and/or adjacent to the Right-of-Way is damaged as a result of:

- (i) the performance by STAR of the maintenance required by section 7.1, or the failure or neglect to perform such maintenance; and/or
- (ii) STAR's design, installation or use of the Improvements, regardless of cause;

at its sole cost and expense STAR shall forthwith correct such deficiency and restore the Highway and the surface of the Right-of-Way to the same condition it was in prior thereto, and if STAR 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 STAR agrees to reimburse ACHD for the costs and expenses thereof, including, without limitation, reasonable compensation for the use of staff and equipment of ACHD.

7.3 Notwithstanding the provisions of section 7.2, should an emergency exist related to STAR's use of this license which threatens the stability or function of the Cabinets, or the Highway on or adjacent to the Right-of-Way or the safety of the public use thereof, ACHD shall have the right to immediately perform, on behalf of and at the cost of STAR, necessary emergency repairs.

7.4 STAR shall be responsible for the relocation of any existing utilities located on the Right-of-Way as may be required in connection with any construction or installation of Improvements by STAR in the Right-of-Way.

SECTION 8. RELOCATION OF IMPROVEMENTS. If during the term of this Agreement ACHD requires, in its sole discretion, at any time, and from time to time, that the Highway on and/or adjacent to the Right-of-Way be widened and/or realigned, redesigned, improved and/or reconstructed, STAR hereby accepts responsibility for all costs for relocating, modifying or otherwise adapting the Improvements to such realignment and/or relocation and/or reconstruction if required by ACHD, which shall be accomplished by STAR according to designs, plans and specifications approved in advance by ACHD in writing; provided, STAR may elect to terminate this Agreement in lieu of complying with this responsibility, and further provided ACHD gives STAR adequate written notice as necessary to allow STAR to redesign, relocate, modify or adapt the Improvements to the

realignment and/or relocation and/or reconstruction of the Highway and also licenses STAR such additional area of its right-of-way, if any, as may be necessary for the proper operation of the Improvements.

SECTION 9. PERMIT. If the proposed construction and installation of the Improvements, or any reconstruction, relocation or maintenance thereof, requires STAR to obtain a permit under ACHD policies, STAR shall first obtain such permit from ACHD (Construction Services Division) before commencing such work, pay the required fees and otherwise comply with the conditions set forth therein.

SECTION 10. NO TITLE IN STAR. STAR shall have no right, title or interest in or to the Right-of-Way other than the right to temporarily use the same pursuant to the terms of this Agreement.

SECTION 11. NO COSTS TO ACHD. Any and all costs and expenses associated with STAR's Authorized Use of the Right-of-Way, or any construction or installation of Improvements thereon, or the repair and maintenance thereof, or the relocation of Improvements or utilities thereon, or the restoration thereof at the termination of this Agreement, shall be at the sole cost and expense of STAR.

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

SECTION 13. RESTORATION ON TERMINATION. Upon termination of this Agreement, STAR shall promptly remove all Improvements and restore the Right-of-Way and Cabinets to at least its present condition, less ordinary wear and tear. Should STAR fail or neglect to promptly remove the Improvements and restore the Right-of-Way and Cabinets, ACHD may do so and assess STAR for the costs thereof. Provided, ACHD and STAR may agree in writing that some or all of such Improvements are to remain on the Right-of-Way following termination, and by entering into such an agreement STAR thereby disclaims all right, title and interest in and to the same, and hereby grants such Improvements to ACHD, at no cost. Further provided, if the Authorized Use of the Right-of-Way under this Agreement is for landscaping in ACHD right-of-way and the irrigation and maintenance thereof, and the general purpose government with jurisdiction has adopted ordinances, rules and regulations governing the landscaping and maintenance of such right-of-way by owners of the adjacent property, to the extent such owners are obligated to maintain and irrigate the landscaping STAR need not remove the same from the Right-of-Way.

SECTION 14. INDEMNIFICATION. STAR hereby indemnifies and holds ACHD harmless from and against any and all claims or actions for loss, injury, death, damages, mechanics and other liens arising out of the failure or neglect of STAR, STAR's employees, contractors and agents to properly and reasonably make Authorized Use of the Right-of-Way or properly construct, install, plant, repair or maintain the Improvements thereon, or that otherwise result from the use and occupation of the Right-of-Way by STAR, including, without limitation, any attorneys' fees and costs that may be incurred by

ACHD in defense of such claims or actions indemnified against by STAR hereunder. For claims or actions arising out of failures or neglects occurring during the term of this Agreement, STAR's obligations pursuant to this section shall survive the termination of this Agreement.

SECTION 15. COMPLIANCE WITH LAW; WASTE AND NUISANCES PROHIBITED. In connection with STAR's use of the Right-of-Way, throughout the term of this Agreement STAR covenants and agrees to: (i) comply with and observe in all respects any and all federal, state and local statutes, ordinances, policies, rules and regulations, including, without limitation, those relating to traffic and pedestrian safety, the Clean Water Act and/or to the presence, use, generation, release, discharge, storage or disposal in, on or under the Right-of-Way of any Hazardous Materials (defined as any substance or material defined or designated as hazardous or toxic waste, material or substance, or other similar term, by any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future); (ii) obtain any and all permits and approvals required by ACHD or any other unit of government; and (iii) commit no waste nor allow any nuisance on the Right-of-Way. To the extent permitted by law, STAR covenants and agrees to indemnify and hold ACHD harmless from and against any and all claims, demands, damages, liens, liabilities and expenses (including, without limitation, reasonable attorneys' fees), arising directly or indirectly from or in any way connected with the breach of the foregoing covenant. These covenants shall survive the termination of this Agreement.

SECTION 16. ASSIGNMENT. STAR cannot sell, assign or otherwise transfer this Agreement, the license herein extended or any of its rights hereunder except with the prior written consent of ACHD, which consent shall not be granted unless the assignee assumes all obligations, warranties, covenants and agreements of STAR herein contained.

SECTION 17. ATTORNEYS' FEES. In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees.

SECTION 18. NOTICE. Any notice under this Agreement shall be in writing and be delivered in person, or by United States Mails, postage prepaid, or by public or private 24-hour overnight courier service (so long as such service provides written confirmation of delivery), or by facsimile verified by electronic confirmation. All notices shall be addressed to the party at the address set forth below or at such other addresses as the parties may from time to time direct in writing by notice given the other. Any notice shall be deemed to have been given on (a) actual delivery or refusal, (b) three (3) days following the day of deposit in the United States Mails, (c) the day of delivery to the overnight courier or (d) the day facsimile delivery is electronically confirmed.

If to ACHD: Ada County Highway District
3775 Adams Street
Garden City, Idaho 83714
Attn: Traffic Department

If to STAR: City of Star
P.O. Box 130
Star, Idaho 83669

SECTION 19. SUCCESSORS AND ASSIGNS. This Agreement, the license herein extended and the covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their successors and, if consented to by ACHD under section 16, STAR's assigns.

SECTION 20. EXHIBITS; RECITALS. All exhibits attached hereto and the recitals contained herein are incorporated herein as if set forth in full herein.

SECTION 21. NO RECORDATION. This Agreement shall not be recorded in the Official Real Property Records of Ada County, Idaho.

SECTION 22. WARRANTY OF AUTHORITY TO EXECUTE.

22.1 The person executing this Agreement on behalf of ACHD represents and warrants due authorization to do so on behalf of ACHD, and that upon execution of this Agreement on behalf of ACHD, the same is binding upon, and shall inure to the benefit of, ACHD.

22.2 The person executing the Agreement on behalf of STAR represents and warrants due authorization to do so on behalf of STAR, and that upon execution of this Agreement on behalf of STAR, the same is binding upon, and shall inure to the benefit of, KUNA.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day, month and year first set forth above.

CITY OF STAR

By: **Trevor A. Chadwick**
Its: **Mayor**

ATTEST:

By: **Jacob Qualls**
Its: **City Clerk / Treasurer**

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 2021, before me, _____, a Notary Public in and for the State of Idaho, personally appeared, **Trevor A. Chadwick**, known or identified to me to be the Mayor of the City of Star, and **Jacob Qualls**, known or identified to me to be the City Clerk / Treasurer of the City of Star, the persons who executed this instrument on behalf of said City, and acknowledged to me that the City of Star executed the same.

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

Notary Public for Idaho
Residing at: _____
My Commission Expires: _____

ADA COUNTY HIGHWAY DISTRICT

By: **Kent Goldthorpe**
Its: **President**

ATTEST:

By: **Bruce S. Wong**
Its: **Director**

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 2021, before me, _____, a Notary Public in and for the State of Idaho, personally appeared, **Kent Goldthorpe**, known or identified to me to be the President of the Ada County Highway District Commission, and **Bruce S. Wong**, known or identified to me to be the Director of the Ada County Highway District, the persons who executed this instrument on behalf of said District, and acknowledged to me that the Ada County Highway District executed the same.

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: _____
My Commission Expires: _____

EXHIBITS

Exhibit A – Description and/or Depiction of Right-of-Way/Traffic Signal Cabinets

The Ada County Highway District (ACHD) is committed to compliance with Title VI of the Civil Rights Act of 1964 and related regulations and directives. ACHD assures that no person shall on the grounds of race, color, national origin, gender, disability or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any ACHD service, program or activity.