

RESOLUTION NO. 988

BY THE ADA COUNTY HIGHWAY DISTRICT BOARD OF COMMISSIONERS:
REBECCA W. ARNOLD, JOHN S. FRANDEN, CAROL A. MCKEE, SARA M.
BAKER AND DAVID L. CASE.

A RESOLUTION APPROVING THE INTERAGENCY GOVERNMENTAL
AGREEMENT FOR WAIVER OF FEES AND COST BETWEEN THE ADA
COUNTY HIGHWAY DISTRICT AND THE CITY OF GARDEN CITY.

THE UNDERSIGNED, being the Commissioners of the Ada County Highway District,
hereby consent to and authorize in lieu of meeting the following Preamble and
Resolution:

PREAMBLES

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, ACHD and City are both “taxing districts,” as defined by Idaho
Code § 63-201; and

WHEREAS Pursuant to Idaho Code § 67-8203(7) of the Idaho Development
Impact Fee Act, a taxing district must pay an impact fee for a development that is for an
activity within the taxing district’s public responsibility if ACHD’s impact fee ordinance
expressly includes taxing districts as being subject to paying development impact fees;
and

WHEREAS, ACHD’s Impact Fee Ordinance No. 208, as amended from time to
time (the “Ordinance”) Section 7304.2 expressly states that taxing districts are obligated
to pay development impact fees, unless ACHD and the taxing district enter into a written
agreement that provides otherwise; and

WHEREAS, ACHD and the City have determined that it is against public policy
for two taxing districts comprised of some or all of the same taxpayers to tax one
another. ACHD and the City have further determined it to be in the public’s best interest
to provide that neither party shall charge the other any fees or other amounts that would
otherwise be funded by taxpayer funds; and

WHEREAS, the principal term and condition of the attached Interagency
Governmental Agreement for Waiver of Cost and Fees is to provide that neither party
shall be obligated to provide any fees or charges to the other during the term of the
Agreement; and

WHEREAS, ACHD and the City agree on the details of the attached Interagency Governmental Agreement for Waiver of Cost and Fees and there is a consensus that the terms and conditions of the Agreement are in the best interest of each agency; and

WHEREAS, the Commission, upon full review and consideration of the foregoing, finds that the Interagency Governmental Agreement for Waiver of Cost and Fees is in the best interest of the public.

RESOLUTIONS

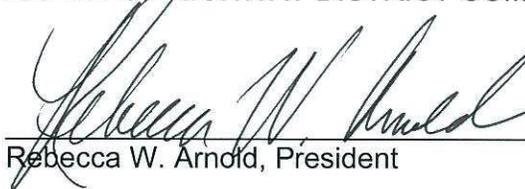
NOW, THEREFORE, IT IS HEREBY RESOLVED by the Commissioners, as follows:

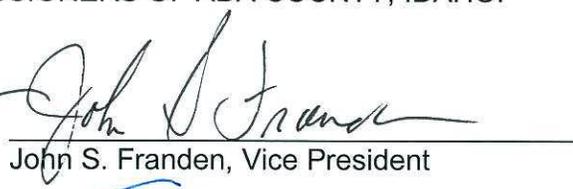
1. the attached Interagency Governmental Agreement for Waiver of Cost and Fees is in the best interest of the public;
2. the attached Interagency Governmental Agreement for Waiver of Cost and Fees is hereby confirmed and approved; and
3. the Director is authorized and directed to execute and/or deliver the attached Interagency Governmental Agreement for Waiver of Cost and Fees in substantially the form presented at the meeting and any related documents necessary to consummate the contemplated transaction.

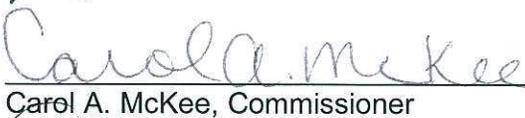
IN WITNESS WHEREOF, the parties executed these Preambles and Resolutions which are in full force and effect. These Preambles and Resolutions may be executed by facsimile and/or in multiple counterparts which taken together will constitute this document in its entirety.

ADOPTED this 6th day of July, 2011.

BOARD OF HIGHWAY DISTRICT COMMISSIONERS OF ADA COUNTY, IDAHO:


Rebecca W. Arnold, President


John S. Franden, Vice President


Carol A. McKee, Commissioner


Sara M. Baker, Commissioner


David L. Case, Commissioner

**INTERAGENCY GOVERNMENTAL AGREEMENT
FOR WAIVER OF COSTS AND FEES**

THIS INTERAGENCY GOVERNMENTAL AGREEMENT FOR WAIVER OF COSTS AND FEES ("Agreement") is made and entered into this 6th day of July, 2011, by and between the Ada County Highway District, a body politic and corporate of the State of Idaho ("ACHD") and Garden City, an Idaho municipal corporation ("City").

RECITALS

A. 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.

B. City is a public entity organized and operating pursuant to Idaho Code Title 50, as amended and supplemented. City is a municipal corporation with jurisdiction, authority and police power to regulate and control municipal activities within the City.

C. 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.

D. ACHD and City are both "taxing districts," as defined by Idaho Code § 63-201.

E. Pursuant to Idaho Code § 67-8203(7) of the Idaho Development Impact Fee Act, a taxing district must pay an impact fee for a development that is for an activity within the taxing district's public responsibility if ACHD's impact fee ordinance expressly includes taxing districts as being subject to paying development impact fees.

F. ACHD's Impact Fee Ordinance No. 208, as amended from time to time (the "Ordinance") Section 7304.2 expressly states that taxing districts are obligated to pay development impact fees, unless ACHD and the taxing district enter into a written agreement that provides otherwise.

G. The parties have determined that it is against public policy for two taxing districts comprised of some or all of the same taxpayers to tax one another. The parties have further determined it to be in the public's best interest to provide that neither party shall charge the other any fees or other amounts that would otherwise be funded by taxpayer funds.

H. In consideration of the above, the purpose of this Agreement is to set forth in writing the parties' agreement that neither party shall be obligated to provide any fees or charges to the other during the term of this Agreement as further set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do mutually undertake, promise, and agree as follows:

SECTION 1. **PURPOSES AND POWERS/INCORPORATION OF RECITALS**

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.

SECTION 2. **NO PAYMENT OF FEES**

During the Term (defined below) of this Agreement, neither party shall be obligated to pay to the other any fees, impact fees, charges, or any other types of expenditures (each of the foregoing defined herein as a "Fee") for any services, activities, unimproved rights-of-way, other unimproved real property, regardless of the provision and/or transfer to the other of such services, activities, rights-of-way, or other real property, except as otherwise agreed in writing and signed by both parties. Notwithstanding the foregoing, ACHD agrees to pay only those reasonable and necessary plan review and inspection fees charged by an outside third party in the review of an ACHD application for a major building project in Garden City.

SECTION 3. **EFFECTIVE DATE/TERM AND TERMINATION**

3.1 Effective Date. This Agreement shall become effective upon the date upon which both parties' governing boards have authorized it (the "Effective Date") pursuant to Idaho Code § 67-2332.

3.2 Term and Termination. The term of this Agreement shall be ten (10) years (the "Term") after the Effective Date unless it is terminated earlier as follows: Either party may terminate this Agreement upon sixty (60) days' written notice to the other, provided, however, that any Fees that would have been due and payable by the terminating party eighteen (18) months prior to the date of termination that were not owed due to the existence of this Agreement shall become immediately due and payable and paid on the date of termination of this Agreement. Subject to the foregoing, upon termination of this Agreement, neither party shall have further recourse hereunder except with respect to the payment of Fees as set forth in this Section 3.2

SECTION 4.
GENERAL PROVISIONS

4.1 Constitutional Debt Limitation. Nothing in this Agreement shall be construed to be an indebtedness or liability in violation of Article VIII, Section 3 of the Idaho Constitution.

4.2 Attorney Fees. In the event of any controversy, claim, suit, proceeding or action being filed or instituted between the parties to enforce the terms and conditions of this Agreement, or arising from the breach of any provision hereof, the prevailing party will be entitled to receive from the other Party all costs, damages, and expenses, including reasonable attorneys' fees including fees on appeal, incurred by the prevailing party. The prevailing party will be that party who was awarded judgment as a result of trial or arbitration.

4.3 Choice of Law. The validity, meaning, and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.

4.4 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 the other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein.

4.5 Binding Agreement. 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.

4.6 Severability. 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.

4.7 Waiver, Acknowledgments and Modifications. 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.

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

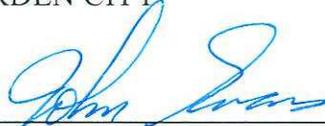
4.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same.

4.10 Limitations on Liability. 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.

4.11 Time is of the Essence. Time shall be of the essence for all events and obligations to be performed under this Agreement.

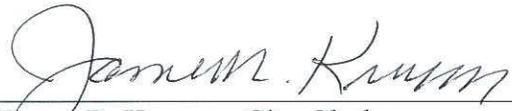
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

GARDEN CITY



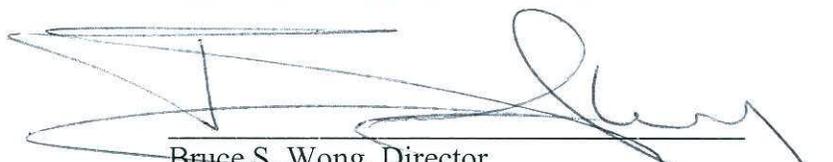
John Evans, Mayor

ATTEST:



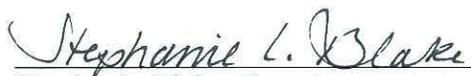
James R. Krueger, City Clerk

ADA COUNTY HIGHWAY DISTRICT



Bruce S. Wong, Director

ATTEST:



Stephanie Blake, Secretary