

Property Management No. _____ - _____ - _____
Street:
T _____, R _____, S _____

ROADSIDE MEMORIAL LICENSE AGREEMENT

THIS ROADSIDE MEMORIAL LICENSE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20__ ("Effective Date"), by and between the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the state of Idaho ("ACHD"), and **(insert name of licensee)** ("Licensee").

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 Ada County, Idaho, more particularly described and/or depicted on Exhibit "A" attached hereto (the "Right-of-Way").

1.2 Licensee desires a license to use the Right-of-Way for the 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 Licensee.

SECTION 2. LICENSE; LICENSE NOT EXCLUSIVE.

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

Construction, installation, repair and maintenance of a roadside memorial (insert conditions/restrictions as applicable).

2.2 This Agreement does not extend to Licensee the right to use the 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)), Licensee's Authorized Use is subject to the rights of the public to use the Right-of-Way for Highway purposes. Licensee'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

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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, INSTALLATION, REPAIR AND MAINTENANCE OF MEMORIAL. The installation, construction, repair and maintenance of a roadside memorial by Licensee in the Right-of-Way (the "Memorial") 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 Memorial, and the responsibility therefor shall be and remain in Licensee.

SECTION 4. WAIVER AND ESTOPPEL STATEMENT BY LICENSEE. Licensee 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. Licensee further acknowledges and agrees that it specifically assumes the risk that the license pursuant to this Agreement may be terminated before Licensee has realized any benefit of installing, constructing, repairing or maintaining the Memorial, and Licensee hereby waives and estops itself from asserting any claim that the license is in any way irrevocable because Licensee has expended funds on the Memorial and the Agreement has not been in effect for a period sufficient for Licensee to realize any 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 Licensee defaults in the performance of any obligations incumbent upon it to perform hereunder, ACHD may terminate this Agreement and the rights extended to Licensee hereunder at any time, effective at the end of thirty (30) days following the date ACHD shall provide written notice of termination to Licensee, which notice shall specify such default(s). Licensee 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 Licensee's Authorized Use of the Right-of-Way under this Agreement.

SECTION 7. MAINTENANCE; FAILURE TO MAINTAIN.

7.1 At its sole cost and expense, Licensee shall maintain the Memorial in good condition and repair and as required to satisfy applicable laws, the policies of ACHD and sound engineering practices. Licensee 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 Licensee of the maintenance required by section 7.1, or the failure or neglect to perform such maintenance; and/or

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- (ii) Licensee's design, installation or use of the Memorial, regardless of cause;

at its sole cost and expense Licensee 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 Licensee 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 Licensee 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 the Licensee's use of this license which threatens the stability or function of 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 Licensee, necessary emergency repairs.

SECTION 8. RELOCATION OF MEMORIAL. 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, Licensee hereby accepts responsibility for all costs for relocating, modifying or otherwise adapting the Memorial to such realignment and/or relocation and/or reconstruction if required by ACHD, which shall be accomplished by Licensee according to designs, plans and specifications approved in advance by ACHD in writing; provided, Licensee may elect to terminate this Agreement in lieu of complying with this responsibility, and further provided ACHD gives Licensee adequate written notice as necessary to allow Licensee to redesign, relocate, modify or adapt the Memorial to the realignment and/or relocation and/or reconstruction of the Highway and also licenses Licensee such additional area of its right-of-way, if any, as may be necessary for the proper operation of the Memorial.

SECTION 9. PERMIT. If the proposed construction and installation of the Memorial, or any reconstruction, relocation or maintenance thereof, requires Licensee to obtain a permit under ACHD policies, Licensee 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 LICENSEE. Licensee 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 Licensee's Authorized Use of the Right-of-Way, or any construction or installation of Memorial thereon, or the repair and maintenance thereof, or the relocation of Memorial or utilities thereon, or the restoration thereof at the termination of this Agreement, shall be at the sole cost and expense of Licensee.

SECTION 12. RESTORATION ON TERMINATION. Upon termination of this Agreement, Licensee shall promptly remove the Memorial and restore the Right-of-Way to at least its present condition, less ordinary wear and tear. Should Licensee fail or neglect to promptly remove the Memorial and restore the Right-of-Way, ACHD may do so and assess Licensee for the costs thereof.

SECTION 13. INDEMNIFICATION. Licensee 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 Licensee, Licensee'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 Memorial thereon,

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or that otherwise result from the use and occupation of the Right-of-Way by Licensee, including, without limitation, any attorneys' fees and costs that may be incurred by ACHD in defense of such claims or actions indemnified against by Licensee hereunder. For claims or actions arising out of failures or neglects occurring during the term of this Agreement, Licensee's obligations pursuant to this section shall survive the termination of this Agreement.

SECTION 14. COMPLIANCE WITH LAW; WASTE AND NUISANCES PROHIBITED. In connection with Licensee's use of the Right-of-Way, throughout the term of this Agreement Licensee 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, Licensee 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 15. ASSIGNMENT. Licensee 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 Licensee herein contained.

SECTION 16. 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 17. 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: Right of Way Division

If to Licensee: **(insert name and address of Licensee)**

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SECTION 18. 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 15, Licensee's assigns.

SECTION 19. EXHIBITS; RECITALS. All exhibits attached hereto and the recitals contained herein are incorporated herein as if set forth in full herein.

SECTION 20. NO RECORDATION. This Agreement shall not be recorded in the Official Real Property Records of Ada County, Idaho.

SECTION 21. WARRANTY OF AUTHORITY TO EXECUTE.

21.1 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.

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

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

ADA COUNTY HIGHWAY DISTRICT:

David Serdar
Right of Way Supervisor

LICENSEE: (insert name of entity, if applicable)

By:(insert name of individual signing)
Its: (insert title of individual signing)

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