TO: ACHD Commission
   Director Wong and Deputy Directors
FROM: Craig Herndon, Project Manager
DATE: October 25, 2011
SUBJECT: Ustick Road, Duane Drive to Campton Way
Interagency Agreement for Construction and Water Line Improvements
ACHD Project No. 507004.001
Staff Memo for Consent Agenda – November 2, 2011 Commission Meeting

Executive Summary:
The roadway design was completed in 2011, construction is programmed for 2012, and the City of Meridian is requesting rotomill installation and water line improvements as part of the project. Staff recommends approval of the attached Interagency Agreement.

Background:
The final right-of-way acquisition is currently in progress. The acquisition of the Stout parcel is nearing completion. The property owner will sign a right of entry agreement with ACHD. Once all right-of-way has been purchased, right of entry obtained from the Stout parcel, permits have been acquired and agreements completed, the plans and construction documents will be prepared for the bid and award phase.

Facts and Findings:
The City of Meridian has requested that the District include needed rotomill installation and water line improvements with the construction of the roadway project. Installation of rotomill as part of this contract was agreed to as part of the Cost Share Agreement and these costs will be reimbursed 100% to ACHD.

Fiscal Implications:
The budget for this project includes funds needed to complete the rotomill installation and water line improvements. The estimated cost of these facilities is less than $5,000 which will be fully reimbursed by the City of Meridian.

Policy Implications:
It is ACHD policy to reduce inconvenience for the public.

Alternatives:
1. Approve the agreement and authorize the Commission President to sign.
2. Do not approve the agreement and provide staff with further guidance.

Recommendation:
Staff recommends alternative 1, approve the agreement and authorize the Commission President to sign.

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<tr>
<th>Programmed Expenditures:</th>
<th>2012/2013 Budget</th>
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<tr>
<td>Construction</td>
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<tr>
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ACHD Priority Ranking: 7 of 125
INTERAGENCY AGREEMENT FOR:
ROADWAY CONSTRUCTION / WATER IMPROVEMENTS / ROTOMILL PLACEMENT
USTICK FROM DUANE DRIVE TO CAMPTON WAY
ACHD PROJECT NO. 507004.001

THIS AGREEMENT made and entered into this ___ day of ________, 2011, by and between the ADA COUNTY HIGHWAY DISTRICT, by and through its Board of Commissioners hereinafter called DISTRICT or ACHD, as first party, and the CITY OF MERIDIAN, a municipal corporation, by and through its Mayor and City Council hereinafter called MERIDIAN as second party, both parties being a body politic and corporate of the State of Idaho.

RECITALS

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, 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.

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.

WHEREAS, the DISTRICT and MERIDIAN desire to undertake a joint effort to share the tasks and costs of constructing curb, gutter and sidewalk on Ustick Road from Duane Drive to Campton Way, including rotomill placement and water facility relocations and adjustments as detailed in Project Number 507004.001, hereinafter referred to as the CONTRACT.

WHEREAS, the DISTRICT is willing to accommodate MERIDIAN’S request by arranging for rotomill placement and water facility relocations and adjustments as part of the Project plans so long as the DISTRICT receives assurances that the DISTRICT will be fully reimbursed for all costs and expenses it incurs as a result of additional work attributed to the rotomill placement and water facility relocations and adjustments within the Project boundaries, including but not limited to, costs for changed conditions, plan errors and omissions, and delays attributable to the rotomill installation and water facility design and installation.
NOW, THEREFORE, in consideration of the foregoing premises, mutual
covenants and agreement herein contained, the parties hereto agree as follows:

1. DISTRICT SHALL:

a. Be the party responsible for soliciting, receiving, and opening of bids and for
executing and administering the construction CONTRACT for the roadway
reconstruction, and rotomill placement and water facility relocations and
adjustments work referenced herein;

b. Provide MERIDIAN with a complete set of combined bid documents for the
roadway reconstruction, and for the rotomill placement and water facility
relocations and adjustments work referenced herein;

c. Furnish MERIDIAN with an abstract of all bids received, and obtain
MERIDIAN’S concurrence with DISTRICT’S recommendation for award of the
CONTRACT prior to making such award;

d. Coordinate with MERIDIAN should any changes be made to DISTRICTS
portion of the CONTRACT that have the potential to impact MERIDIAN’S water
relocations and adjustments work;

e. Make monthly progress payments and the final CONTRACT payment to the
Contractor in conformance with the terms of the construction CONTRACT;

f. Submit to MERIDIAN a copy of each Contractor progress payment estimate, as
such estimates are approved by DISTRICT after obtaining MERIDIAN’S
concurrence regarding MERIDIAN’S portion of the work, together with an
invoice for MERIDIAN’S share of the construction CONTRACT costs earned by
and to be paid to Contractor;

g. Provide for the reference and replacement of all pre-existing survey monuments
within the work area;

h. Provide the trench compaction testing for water line facility relocations and
adjustments work from 1-foot above the pipe zone to sub-grade of the roadway
section; trench compaction testing shall be provided at the minimum frequency
rate of one (1) test per five hundred (500) lineal feet per foot of trench depth;
provide all re-testing required in any area that does not meet CONTRACT
requirements;

i. Provide the field survey and grade control necessary for construction of the
roadway. Centerline or offsets and stationing shall be established prior to
MERIDIAN staking water facilities contained in MERIDIAN’S portion of the
work.
2. MERIDIAN SHALL:

a. Be the party responsible to provide the inspection of all water facility relocated or adjusted under the CONTRACT and provide copies of appropriate tests and diaries to the District Project Representative. Field survey and grade control required for water relocations and adjustments under the CONTRACT shall be provided by MERIDIAN;

b. Provide DISTRICT with the construction plans, special provisions, and unit bid quantities for the rotomill placement and water facilities to be included in the bid documents for the CONTRACT (all work required for the water facilities to be performed in conformance with the most current edition of the Idaho Standards for Public Works Construction (ISPWC) and the City of Meridian Supplemental Specifications to the ISPWC);

c. Remit to DISTRICT, within thirty-five (35) calendar days after the date of invoice therefore, all funds for which MERIDIAN is responsible pursuant to the approved final CONTRACT payment estimate;

d. Remit to DISTRICT within thirty-five (35) calendar days after the date of invoice therefore, all funds for which MERIDIAN is responsible pursuant to this Agreement;

e. Reimburse the DISTRICT, up to a maximum of five (5) percent of MERIDIAN’S construction costs for all additional costs incurred by the DISTRICT, including overhead and benefits, project administration, compaction testing, and soils work required solely for the rotomill placement and installations, adjustments, relocations, and abandonments of the water facilities;

f. Reimburse the DISTRICT 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 the MERIDIAN’S project costs as they relate to the total project construction costs;

g. Be liable for the cost of repairing any trench failures attributable to rotomill placement and water facility relocations and adjustments, and be liable for and indemnify the District for any and all costs and damages resulting from any such trench failure; and

h. Reimburse District for any additional costs to District attributable to the installations, adjustments, relocations, and abandonments of MERIDIAN’S portion of the rotomill placement and water facilities or to the removal of any or all items from the Contract that are associated with the water facility relocations and adjustments.
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 CONTRACT amount for MERIDIAN'S portion of the Project to be reimbursed to DISTRICT by MERIDIAN shall be based on the actual quantities of work acceptably performed, and/or, installed, as determined from field measurements made by MERIDIAN, and paid for pursuant to the unit, and/or lump sum prices established in the Contract;

c. MERIDIAN'S approval will be required for any change order work involving the rotomill placement and installations, adjustments, relocations, and abandonments of water facilities;

d. Prior to commencement of work by the Contractor, the parties will, together with the Contractor, inspect the entire Project for the purpose of reviewing the Project to locate and note any unstable areas and 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; and

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.
I. 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.

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 ACHD 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. Time shall be of the essence for all events and obligations to be performed under this Agreement.
IN WITNESS HEREOF, the parties hereto have executed this Agreement on the day and year herein first written.

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<tr>
<th>ATTEST:</th>
<th>ADA COUNTY HIGHWAY DISTRICT</th>
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<tr>
<td>By:</td>
<td>By:</td>
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<tr>
<td>Bruce Wong</td>
<td>Rebecca W. Arnold</td>
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<td>Director</td>
<td>President, Board of Commissioners</td>
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<tr>
<th>ATTEST:</th>
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<tr>
<td>By:</td>
<td>By:</td>
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<tr>
<td>Jaycee Holman</td>
<td>Tammy de Weerd</td>
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<tr>
<td>City Clerk</td>
<td>Mayor</td>
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On this __________ day of ____________________, 2011, before me, a notary public in and for said state, personally appeared REBECCA ARNOLD known to me to be the PRESIDENT of the ADA COUNTY HIGHWAY DISTRICT BOARD OF COMMISSIONERS and the person who subscribed said name to the foregoing instrument, and acknowledged to me that they 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 ________________, Idaho
My commission expires:

On this __________ day of ____________________, 2011, before me, the undersigned, personally appeared TAMMY DE WEERD and JAYCEE HOLMAN, Mayor and City Clerk respectively of MERIDIAN 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: