
(space reserved for recording)

Property Management No. RWLA2021-0052

Location: Five Mile Pathway

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 20_____, by and between the ADA COUNTY HIGHWAY DISTRICT, a body politic and corporate of the state of Idaho, ("ACHD") and **City of Meridian**, ("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, municipally described as Five Mile Pathway, Meridian from Ten Mile Rd & Ustick Rd going East Southeast to Pine Ave & Locust Grove Rd. 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 as more particularly described on Exhibit "C" attached hereto. The parties contemplate that upon further development by Licensee, any additional licenses requested by Licensee shall be incorporated into this License Agreement by means of an addendum signed by both parties.

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Licensee to maintain a painted dashed yellow centerline along the Five Mile Creek Pathway from the SW corner of the Intersection at Pine Avenue and Locust Grove, west/northwest for several miles, to and including the Pathway segment on the new Five Mile\Creek Roadway Bridge at Ten Mile Road.

Licensee to contact Digline Inc., prior to start of construction. Licensee to contact Construction Services at 387-6280 to verify if a construction permit is required.

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 it 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 repairs or maintenance, of the Licensee's improvements currently located in the Right-of-Way or the installation or construction of improvements by Licensee 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 Licensee.

SECTION 4. WAIVER AND ESTOPPEL STATEMENT BY LICENSEE. Licensee acknowledges and agrees that the license granted herein is temporary, 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 the economic benefit of the cost of installing, constructing, repairing, or maintaining the Improvements, 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 Improvements and

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the Agreement has not been in effect for a period sufficient for Licensee to realize the economic benefit from such expenditures.

SECTION 5. TERM.

5.1 The term of this Agreement will commence on the ____ day of _____, 20__, and will continue until terminated by ACHD, with or without cause, which termination shall be effective following THIRTY (30) DAYS advance written notice of termination given to Licensee. Upon expiration of the THIRTY (30) DAYS, ACHD shall record a Revocation of Master License Agreement in the Official Real Property Records of Ada County, Idaho.

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 the Licensee'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, Licensee shall maintain the Improvements 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, or the failure or neglect to perform such maintenance; and/or
- (ii) Licensee's design, installation or use of the Improvements, 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

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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.

7.4 Licensee will 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 Licensee 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, Licensee 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 Licensee according to designs, plans and specifications approved in advance by ACHD in writing; provided ACHD gives Licensee adequate written notice as necessary to allow Licensee to redesign, relocate, modify or adapt the Improvements 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 Improvements.

SECTION 9. PERMIT. If the proposed construction and installation of the Improvements, 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, and pay the required fees and otherwise comply with the conditions set forth therein.

SECTION 10. NO TITLE IN LICENSEE. Except as expressly provided herein, the terms and conditions of this Agreement shall not create any type of property right, title or interest in Licensee 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 Improvements thereon, or the repair and maintenance thereof, or the relocation of

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Improvements 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. TAXES AND ASSESSMENTS. Licensee 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, Licensee will promptly remove all Improvements and restore the Right-of-Way to at least its present condition. Should Licensee fail or neglect to promptly remove the Improvements and restore the Right-of-Way, ACHD may do so, and assess Licensee for the costs thereof. Provided, ACHD and Licensee 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 Licensee 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 Licensee need not remove the same from the Right-of-Way.

SECTION 14. 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 Improvements thereon, or that otherwise result from the use and occupation of the Right-of-Way by Licensee, and including any attorney 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 neglect occurring during the term of this Agreement, Licensee'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 Licensee's use of the Right-of-Way, throughout the term of this Agreement Licensee covenants and agrees to: (i) comply 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

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substance, or other similar term, by any federal, state or local environmental statute, regulation or occurrence 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 or allow any nuisance on the Right-of-Way. 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 16. ASSIGNMENT. Licensee, upon the prior written consent of ACHD, may sell, assign or otherwise transfer this Agreement. Upon execution of the Assignment, the assignee assumes all obligations, warranties, covenants and agreements of Licensee 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: Right of Way Division

If to Licensee: **City of Meridian**
33 E Broadway
Suite 206
Meridian, ID 83642

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, Licensee's assigns.

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

SECTION 21. RECORDATION. This Agreement shall be recorded by ACHD upon execution 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 If Licensee is not a natural person, 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.

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ADA COUNTY HIGHWAY DISTRICT

By: **David Serdar**
Its: **Right of Way Supervisor**

STATE OF IDAHO)
) ss.
County of Ada)

On this ___ day of _____, 20___, before me,
_____, a Notary Public in and for the State of Idaho, personally
appeared, David Serdar known or identified to me to be the Right of Way Supervisor for
the Ada County Highway District, the person 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: _____

-

LICENSEE:

By: _____
Its: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 20____, before me, _____, a Notary Public in and for the State of Idaho, personally appeared _____, known or identified to me to be the person(s) who executed this instrument, and acknowledged to me that **she** 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: _____

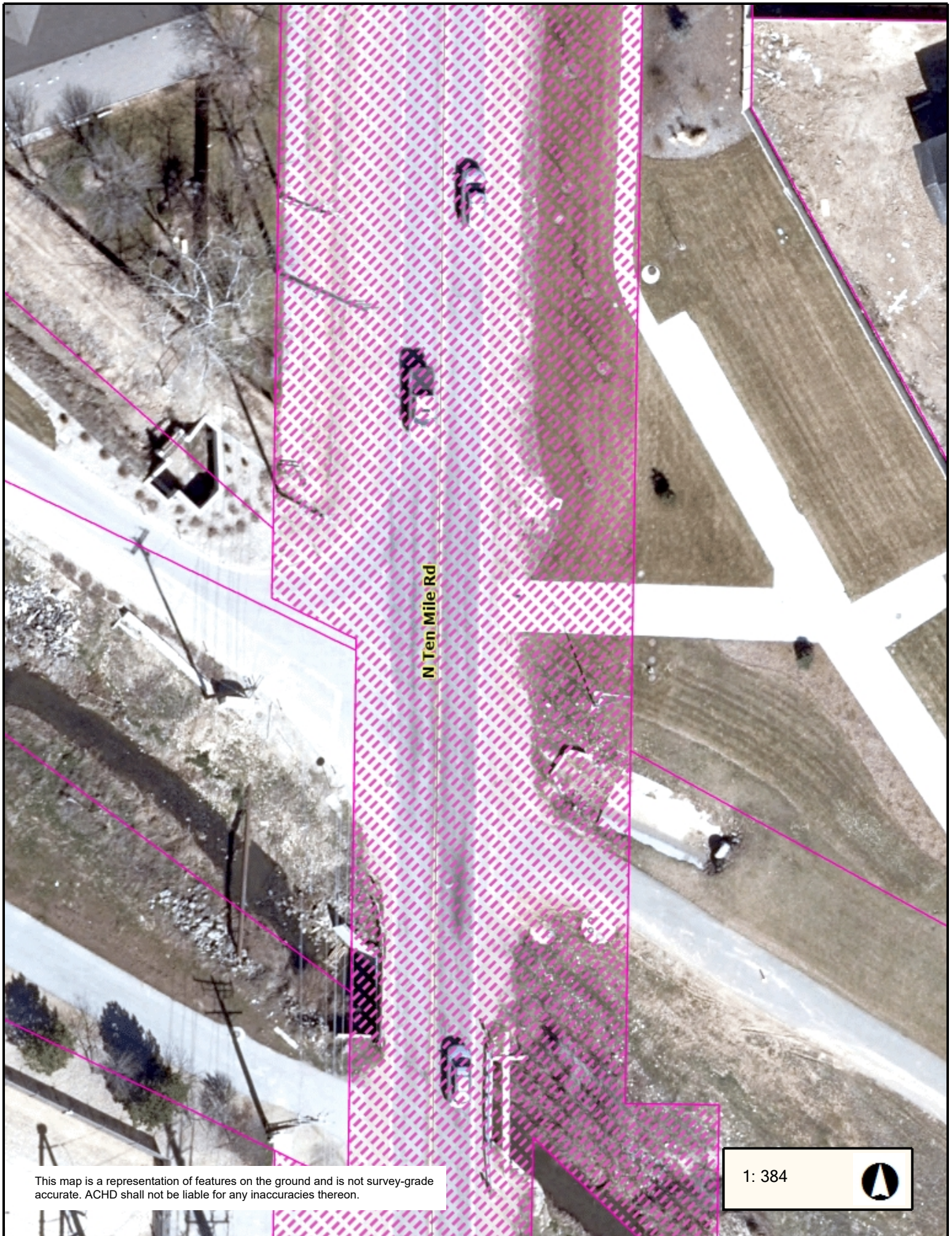
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EXHIBITS

Exhibit A – Depiction of ACHD's Right-of-Way
Exhibit B – Authorized Use of Right-of-Way

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.

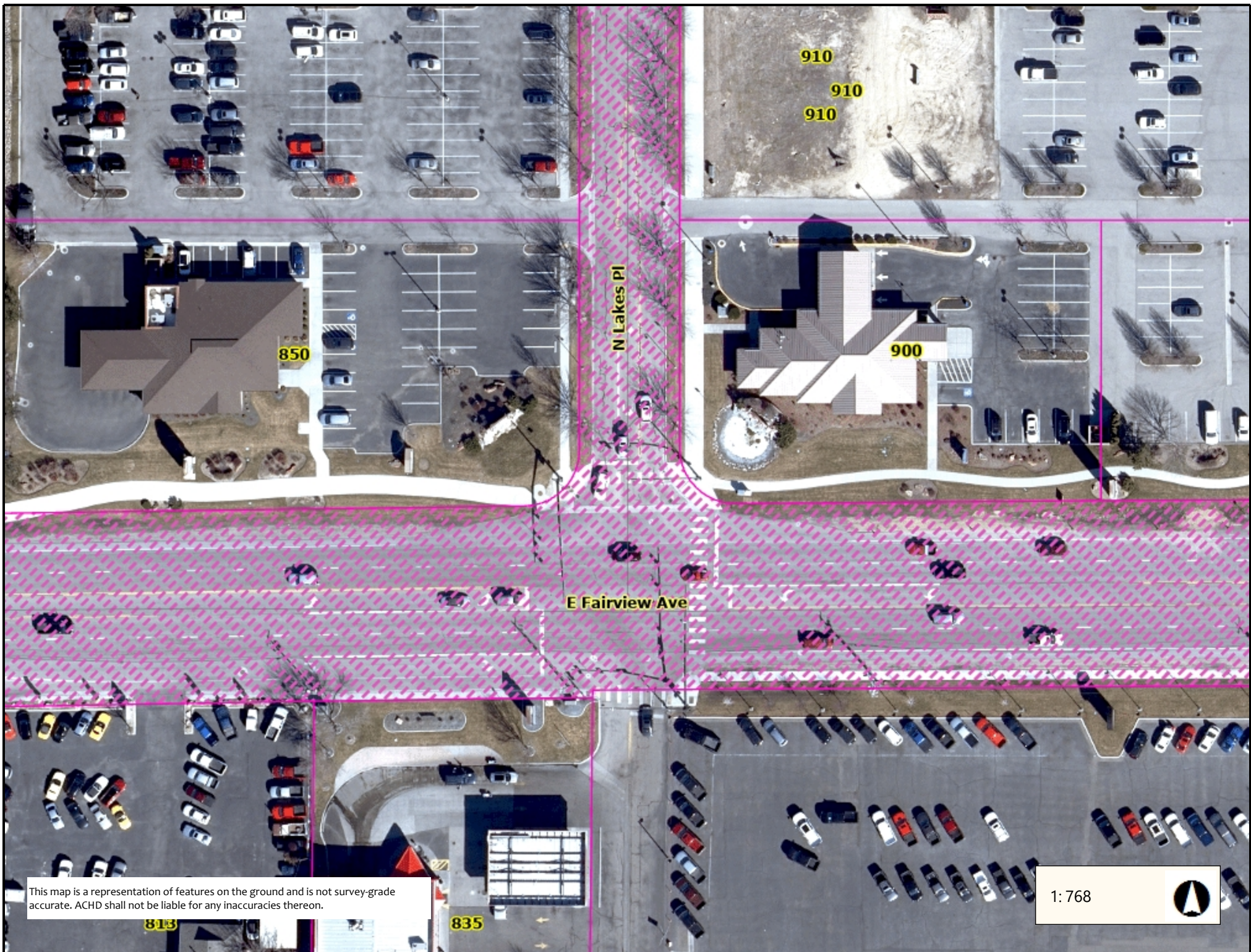
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This map is a representation of features on the ground and is not survey-grade accurate. ACHD shall not be liable for any inaccuracies thereon.

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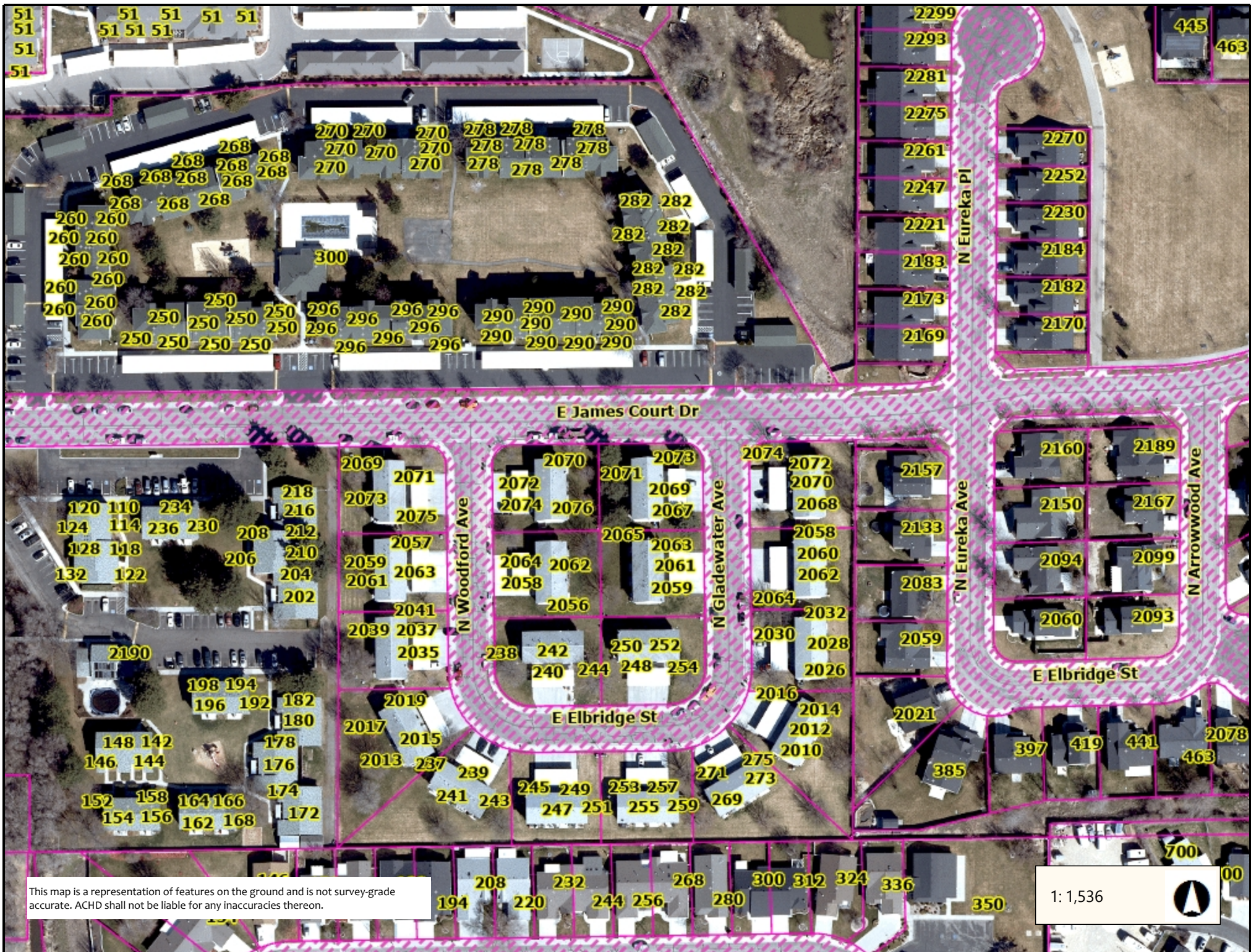


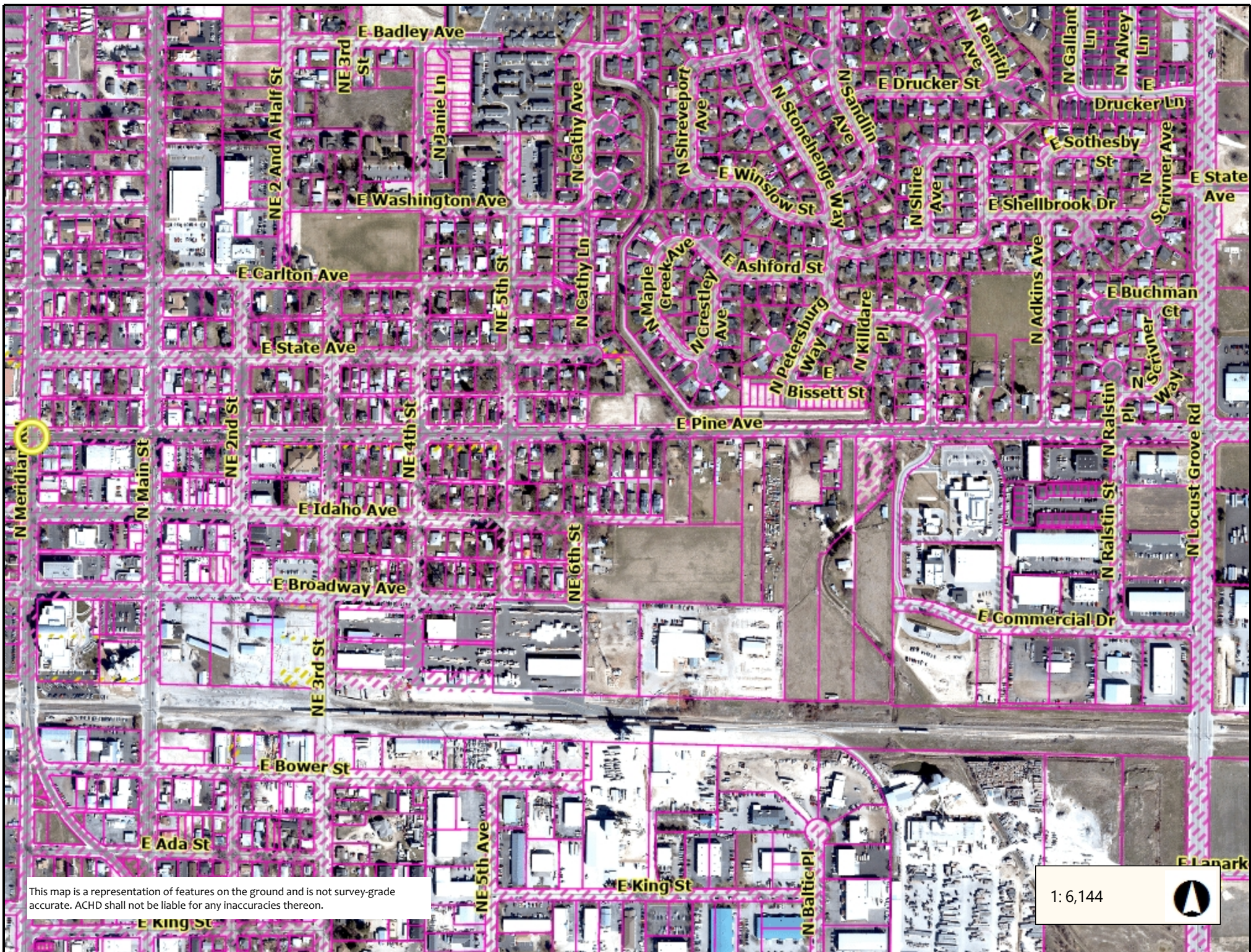


This map is a representation of features on the ground and is not survey-grade accurate. ACHD shall not be liable for any inaccuracies thereon.

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This map is a representation of features on the ground and is not survey-grade accurate. ACHD shall not be liable for any inaccuracies thereon.

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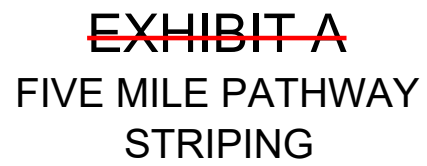


Exhibit B

14095-000 Meridian Parkway 10 PLAN OF REDESIGN/IMPROVEMENT PLANWAY ECHIBICWY

FIVE MILE PATHWAY STRIPING EXHIBIT

CITY OF MERIDIAN, IDAHO

12 May 2021

