



Mayor Robert E. Simison

City Council Members:

John Overton, President
Anne Little Roberts, Vice President
Brian Whitlock
Liz Strader
Doug Taylor
Luke Cavener

TO: Mayor Robert E. Simison
Members of the City Council

FROM: Jason Korn, Environmental Programs Coordinator

DATE: January 23, 2026

SUBJECT: INTERAGENCY COOPERATIVE AGREEMENT BETWEEN THE ADA COUNTY HIGHWAY DISTRICT AND THE CITY OF MERIDIAN FOR THE NINEMILE CREEK FLOOD MITIGATION PROJECT

REQUESTED COUNCIL DATE:

I. RECOMMENDED ACTION

A. Move to:

1. Approve the attached agreement with the Ada County Highway District ("ACHD").
2. Authorize the Mayor to sign the agreement

II. DEPARTMENT CONTACT PERSONS

Jason Korn, Environmental Programs Coordinator	208-489-0364
Warren Stewart, City Engineer	208-489-0350
Laurelei McVey, Director of Public Works	208-985-1259

III. DESCRIPTION

A. Background

The City of Meridian in cooperation with the Meridian Development Corporation (MDC) and the Federal Emergency Management Agency (FEMA) are working to develop flood resilience on Ninemile Creek in the vicinity of Downtown Meridian by installing new storm drain infrastructure and enlarging an existing storm drain line to increase system capacity. The City is also preparing a permit modification

request on behalf of ACHD requesting modifications to the existing ACHD storm drain line running parallel to the Union Pacific Railroad from Meridian Road to the outlet to Ninemile Creek. This interagency cooperative agreement details the participation of each agency in the development and construction of the project.

B. Proposed Project

Staff is requesting approval and signature of the interagency cooperative agreement between the Ada County Highway District (ACHD) and the City of Meridian (Meridian) which establishes the terms for the construction of the Ninemile Flood Resilience Project impacting ACHD infrastructure and Right of Way. The ACHD commission approved and signed the agreement in their January 14th meeting.

IV. **IMPACT**

A. Strategic Impact: The project is identified in the City Strategic Plan Strategy to proactively manage floodplain concerns to maximize development potential in affected community areas.

B. Service/Delivery Impact: The Interagency Cooperative Agreement demonstrates the support and partnership required to construct this project and achieve the desired outcome of mitigating flood risk for downtown Meridian.

VI. **TIME CONSTRAINTS**

The executed interagency agreement must be submitted to FEMA as part of the final design package for approval of Phase 2 grant funds.

VII. **LIST OF ATTACHMENTS**

Interagency Cooperative Agreement with City of Meridian; Bypass Nine Mile Creek Flood Resilience

Approved for Council Agenda: _____

**INTERAGENCY AGREEMENT FOR VARIANCE TO LOCATE
A MUNICIPAL BYPASS FOR NINE MILE CREEK FLOOD RESILIENCE
PROJECT
BETWEEN
CITY OF MERIDIAN, IDAHO
AND THE
ADA COUNTY HIGHWAY DISTRICT**

THIS INTERAGENCY AGREEMENT FOR VARIANCE TO LOCATE A MUNICIPAL BYPASS FOR NINE MILE CREEK FLOOD RESILIENCE PROJECT, hereinafter referred to as the “**Agreement**” is made and entered into as of the ____ day of November, 2025 (the “**Effective Date**”), between the **ADA COUNTY HIGHWAY DISTRICT**, a body politic and corporate of the State of Idaho (“**ACHD**”) and with an address for purposes of notices at 3775 Adams Street, Garden City, ID 83714, and the **CITY OF MERIDIAN, IDAHO**, an Idaho municipal corporation (“**City of Meridian**” or “**City**”) and with an address for purposes of notices at 33 East Broadway Avenue, Meridian, Idaho 83642.

RECITALS

WHEREAS, ACHD is a single county-wide highway district in and for Ada County, Idaho pursuant to Idaho Code, Chapter 14, Title 40, with the exclusive jurisdiction over the public Right-of-Way in Ada County; and

WHEREAS, the City of Meridian is a duly authorized municipal corporation organized and operating pursuant to Idaho Code Title 50, as amended and supplemented with jurisdiction, authority and police power to regulate and control municipal activities with the City;

WHEREAS, Idaho Code Section 50-301 and Idaho Code Section 50-333 grants the City of Meridian the power to prevent the flooding of the city or to secure its drainage to make any improvement or perform any labor on any stream or waterway when necessary to protect the safety of life and property of the city within or without the city limits; and

WHEREAS, the City of Meridian in cooperation with the Meridian Development Corporation (MDC) and the Federal Emergency Management Agency (“FEMA”) are working to develop flood resilience on Nine Mile Creek in the vicinity of Downtown Meridian. The City in conjunction with Forsgren Associates (hereinafter “Consultant”) are preparing a Union Pacific Railroad Company (hereinafter “UPRR”) permit modification request on behalf of ACHD requesting modifications to the existing ACHD storm drain line running parallel to UPRR from Meridian Road to the inlet to Nine Mile Creek proposing enlargement of the existing storm drain line to increase its capacity in accordance with the project plans attached exhibit “A”; and

WHEREAS, in order to construct the modification to enlarge the existing storm drain line running parallel to UPRR from Meridian Road to Nine Mile Creek to increase its capacity as depicted in the attached exhibit "A" the City of Meridian in cooperation with the MDC and their Consultant must obtain a permit modification for ACHD.

AGREEMENT

NOW, THEREFORE, for and in consideration of foregoing Recitals, which are made a part of the Agreement, and not mere Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. City of Meridian's Obligations.

- 1.1. **Design and Construction.** City of Meridian shall, at City's cost and expense, design, construct, operate and maintain the modification to enlarge the existing storm drain line running parallel to UPRR from Meridian Road to Nine Mile Creek to increase its capacity as depicted in the attached exhibit "A" (hereafter referred to as the "Nine Mile Creek Flood Resilience Project") in accordance with good engineering practices and any applicable laws, rules and regulations, including but not limited to, the Idaho Standards for Public Works Construction.
 - 1.1.1. City of Meridian shall pay any and all fees to UPRR for the application to and modification of the permit due to the Nine Mile Creed Flood Resilience Project.
 - 1.1.2. City of Meridian shall provide a certification by a professional engineer licensed in the state of Idaho that the Nine Mile Creed Flood Resilience Project is constructed in accordance with all applicable laws. The Nine Mile Creek Flood Resilience Project design and construction shall include record drawings, and copies of test results that verify trench compaction, and pressure tests per accepted industry standards.
 - 1.1.3. ACHD assumes no responsibility for any deficiencies or inadequacies in the design or construction of the Nine Mile Creed Flood Resilience Project and the responsibility therefore shall be and remain with City of Meridian.
 - 1.1.4. City of Meridian shall install the Nine Mile Creed Flood Resilience Project within the Right-of-Way as authorized and permitted by ACHD.
 - 1.1.5. The cost for any inspection and testing of the Nine Mile Creed Flood Resilience Project accomplished by ACHD or a third party designated by ACHD shall be charged to the City of Meridian. All test results obtained by City shall be provided to ACHD promptly and prior to the operation of the Nine Mile Creed Flood Resilience Project.
 - 1.1.6. City of Meridian shall diligently and continuously prosecute the construction, repair and maintenance of the Nine Mile Creed Flood Resilience Project.

2. **Access.**

- 2.1. If permissions and Authorizations from other parties are necessary to obtain access to construct, operate and maintain the Nine Mile Creek Flood Resilience Project, it is the responsibility of City of Meridian to obtain such permissions and Authorizations.
- 2.2. Unless otherwise specifically agreed, City of Meridian shall be responsible for all "one-call" (Digline) responses for the Nine Mile Creek Flood Resilience Project. All costs associated with the City's access to the Nine Mile Creek Flood Resilience Project will be borne by the City.
- 2.3. City of Meridian 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 the Nine Mile Creek Flood Resilience Project in the Right-of-Way.

3. **Permit.** If the proposed construction and installation of the Nine Mile Creek Flood Resilience Project, or any reconstruction, relocation or maintenance thereof requires City of Meridian to obtain a permit under ACHD rules and regulations, City shall first obtain such permit from ACHD's Construction Services division before commencing such work and pay the required fees and otherwise comply with the conditions set forth therein.

4. **Construction Warranty.** City of Meridian or its contractor shall provide ACHD with a two (2) year warranty for the work and material associated with the construction of the Nine Mile Creek Flood Resilience Project. The warranty period is two (2) years following ACHD's acceptance of the Nine Mile Creek Flood Resilience Project

5. **Variance, Revocable and Non-Exclusive.**

5.1. **Variance.** Pursuant to ACHD rules and regulations, ACHD hereby grants to City of Meridian, a Variance pursuant to ACHD Policy Section 6007.12 to locate, construct, install, operate and maintain the Nine Mile Creek Flood Resilience Project as depicted in the attached exhibit "A" (hereafter "the Variance"). The Variance is personal to the City and may not be assigned, transferred, or conveyed for any purpose during the Term without the express prior written consent of ACHD.

5.2. **Emergency Response Costs.** The City of Meridian shall pay all emergency response costs assessed by ACHD to City for responding to emergencies caused in whole or in part by City's use of the public Right-of-Way, damages to ACHD or its roadway facilities caused by the Nine Mile Creek Flood Resilience Project. ACHD shall charge standard employee rates, plus benefits, and its per diem equipment rates.

5.3. **Term.** The term of this Agreement and Variance shall commence on the Effective Date and continue thereafter for a period of fifty (50) years ("**Term**").

5.4. Future Ordinances. City of Meridian agrees and acknowledges that ACHD may pass an ordinance or resolution that modifies the terms and conditions of the Agreement that imposes additional rules and regulations regarding the Nine Mile Creek Flood Resilience Project and other City owned utilities in the Right-of-Way. Upon passage of such ordinance or resolution, City may terminate the Agreement, and the Variance granted hereunder upon ninety (90) days' notice to ACHD.

Restrictions on Use. This Agreement and Variance is subject to the terms and conditions of the applicable law and other authorizations. The City of Meridian is limited to the use of the Right-of-Way for the Nine Mile Creek Flood Resilience Project. The Nine Mile Creek Flood Resilience Project will remain the sole and exclusive property of City, which will at all times be and remain the City's personal property, except as otherwise provided in this Agreement.

5.4.1. City of Meridian may only use the Nine Mile Creek Flood Resilience Project for City's own purposes during the Term and shall not transfer or sell any portion of the Nine Mile Creek Flood Resilience Project.

5.4.2. City of Meridian shall not use the Nine Mile Creek Flood Resilience Project in a way that is not authorized or interferes with or adversely affects the use of the Right-of-Way.

5.5. **Non-Exclusive.** This Agreement or the Variance granted herein does not extend to City of Meridian 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 Right-of-Way.

5.5.1. **Open Highway.** All roadways within the Nine Mile Creek Flood Resilience Project, including but not limited to: N. Meridian Road, E. Ada Street, E. Franklin Road, E. 2nd Street, and N. Main Street, are open public Highways (as used in this Agreement, the term "**Highway**" is as defined in Idaho Code § 40-109(5)); City of Meridian's authorized use under this Agreement and the Variance is subject to the rights of the public to use the Right-of-Way for Highway purposes.

5.5.2. **Easement Holders.** This Agreement and the Variance is subject to and subordinate to the rights of holders of easements of record and the statutory rights of utilities to use the Right-of-Way.

5.5.3. **Future Third Party Licenses or Easements.** This Agreement and the Variance is not intended to, and shall not, preclude or impede the ability of ACHD to enter into grant easements or other license agreements in the future allowing third parties to also use the Right-of-Way, or the ability of ACHD to redesign, reconstruct, relocate, maintain and improve the Right-of-Way as it determines necessary, in its sole discretion.

5.5.4. **Relocation of Nine Mile Creek Flood Resilience Project and other City of Meridian Sewer and Water Lines and Facilities.** If 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, or otherwise modified, the City of Meridian, under the terms of this Agreement and pursuant to Idaho law, hereby accepts responsibility for any and all costs for relocating, modifying or otherwise adapting the Nine Mile Creek Flood Resilience Project as well as any other affected sewer or water lines or facilities depicted in the attached Exhibit A to such realignment and/or relocation and/or reconstruction if required by ACHD, which shall be accomplished by City according to designs, plans and specifications approved in advance by ACHD in writing and within reasonable deadlines established by ACHD. Failure to comply with a reasonable relocation obligation by any deadline so established by ACHD and as required by ACHD shall be a default of this Agreement and shall cause ACHD not to issue any permit to City for a period of not less than 12 months beginning on such deadline date, except for emergencies. To the extent that the Nine Mile Creek Flood Resilience Project and other City of Meridian sewer and water lines and facilities depicted in the attached Exhibit A are "utility facilities" as defined in Section 40-210(4), Idaho Code, ACHD shall comply with the requirements of Section 40-210(2) in terms of advance notice of projects that may require relocation of such lines and facilities and opportunity for plan review and discussion of recommendations and coordination. Any future relocation of the Nine Mile Creek Flood Resilience Project and other City of Meridian sewer or water lines or facilities that lie within Right-of-Way and deemed necessary by ACHD, shall be moved at the sole expense of the City and City agrees to be bound to comply with ACHD rules and regulations regarding utility relocations and any subsequent amendments.

5.5.4.1. City of Meridian shall assume any and all financial responsibility relating to any future placement or relocation of the Nine Mile Flood Resilience Project as well as any relocation of public utilities located within the public Right-of-Way that is necessitated by the placement or future relocation of the Nine Mile Creek Flood Resilience Project

5.5.4.2. City of Meridian shall have access over, across and under the Right-of-Way for the purposes of accomplishing any such future placement or relocation.

5.5.5. **Waiver and Estoppel Statement.** In consideration of ACHD's grant of the Variance, City of Meridian expressly covenants and agrees that the Variance granted herein is non-transferable, and merely a permissive use of the Right-of-Way pursuant to this Agreement. City further acknowledges and agrees that it specifically assumes the risk that the Variance pursuant to this Agreement may be terminated before City has realized the economic benefit of the cost of installing, constructing, repairing, or maintaining the Nine Mile Creek Flood Resilience Project, and City hereby waives and estops itself from asserting any claim, including damages or reimbursement, that the Variance is in any way irrevocable because City has expended funds on the Nine Mile Creek Flood Resilience Project and the Agreement has not been in effect for a period sufficient for City to realize the economic benefit from such expenditures.

5.5.6. **Removal and Restoration.** Upon termination of this Agreement for breach, City of Meridian shall promptly remove the Nine Mile Creek Flood Resilience Project, however, ACHD and City may agree in writing that some or all of such improvements are to remain in the Right-of-Way following termination. City of Meridian shall repair and restore all portions of ACHD's Right-of-Way and personal property, if any, that is damaged during such removal activities to its condition immediately prior to such removal and damage. Any portion of Nine Mile Creek Flood Resilience Project remaining in the Right-of-Way ninety (90) days after the termination of this Agreement shall be deemed abandoned and ACHD shall have the right to remove and charge all costs to City. Should City fail or neglect to promptly remove the Nine Mile Creek Flood Resilience Project and restore the Right-of-Way, ACHD may do so, and assess City for the costs thereof.

6. **Repair and Maintenance of the Nine Mile Creek Flood Resilience Project.** During the Term, City of Meridian shall operate and maintain the Nine Mile Creek Flood Resilience Project at City's cost and expense in accordance with the provisions of this Agreement, applicable law and the approved Operation and Maintenance Manual, except that ACHD shall operate and maintain the section of the project that accepts ACHD ROW stormwater. ACHD will continue to operate and maintain the storm drain system downstream of the Nine Mile Creek Flood Resilience Project tie in at the Main Street storm drain manhole to the outfall to Nine Mile Creek

6.1. **Routine Maintenance.** The City of Meridian shall cause the Nine Mile Creek Flood Resilience Project to be operated and maintained in good working order during the Term. Non-emergency work that is reasonably expected to result in interference or interruption of the Nine Mile Creek Flood Resilience Project must be coordinated between the parties and performed in accordance with the approved Operation and Maintenance Manual.

6.1.1. Any repairs or maintenance of the Nine Mile Creek Flood Resilience Project shall also be accomplished in accordance with designs, plans and specifications approved in advance by an Idaho licensed engineer and as required to satisfy applicable laws, its policies and good engineering practices at the sole expense of the City.

6.1.2. ACHD assumes no responsibility for any deficiencies or inadequacies in the design, construction or maintenance of the Nine Mile Creek Flood Resilience Project, and the responsibility therefore shall be and remain with the City of Meridian. The City shall have access over, across and under the Right-of-Way for the purposes of accomplishing any such repair and maintenance pursuant to the permit to be obtained pursuant to Section 3 above.

6.2. **Emergency Repairs.** The City of Meridian shall perform all emergency repairs and maintenance to the Nine Mile Creek Flood Resilience Project. Any and all costs associated with such emergency repairs and maintenance performed upon the Nine Mile Creek Flood Resilience Project shall be City's responsibility including any costs with repairing the Right-of-Way in accordance with ACHD rules and regulations.

- 6.2.1. City of Meridian shall provide adequate assurance that the City is diligently pursuing remedial action. If the City fails to initiate and diligently pursue repair, then ACHD may, but shall not be obligated to, effect repair or replacement to prevent any damage to the public Right-of-Way. City of Meridian shall reimburse ACHD for all reasonable costs and expenses pursuant to the City's standard accounting practices, which shall include backup documentation for all charges. Failure to reimburse said costs and expenses shall result in a termination of the Variance, as well as other legal remedies and awards available to ACHD as a result of such failure.
- 6.2.2. City of Meridian shall coordinate all maintenance and repair activities with ACHD. City may hire contractors to perform their maintenance and repair obligations. All contractors performing such work shall be licensed and bonded to work in ACHD Right-of-Way and shall obtain all necessary permits from ACHD to perform such work.
- 6.3. **Damage to Right of Way.** If any portion of the Right-of-Way is damaged as a result of:
- 6.3.1. The performance by City of Meridian of the maintenance required or the failure or neglect to perform such maintenance; and/or
- 6.3.2. City of Meridian design, installation or use of the Nine Mile Creek Flood Resilience Project regardless of cause; and/or
- 6.3.3. Failure of the Nine Mile Creek Flood Resilience Project and/or trenches relating thereto, regardless of cause,
- then, City of Meridian, at its sole cost and expense shall forthwith correct such deficiency and restore the Right-of Way to the same condition it was in prior thereto, and if City or its successors and assigns 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 City agrees to reimburse ACHD for the costs and expenses thereof, including, without limitation, reasonable compensation for the use of staff and equipment of ACHD.

Should an emergency exist related to the Nine Mile Creek Flood Resilience Project that threatens the stability or function of the Right-of-Way or property adjacent to the Right-of-Way or the safety of the public use thereof, ACHD shall first contact the City of Meridian to determine if it is responding to the emergency; and if the City of Meridian has not responded by having qualified personnel at the scene of the emergency within fifteen (15) minutes of notification by ACHD, only then shall ACHD have the unconditional and unquestionable authority to immediately and indefinitely discontinue the operation of the Nine Mile Creek Flood Resilience Project (including, but not limited to shutting off flow control valves and disconnecting power from the pumping system) as are necessary in ACHD's sole discretion to protect the Right-of-Way and/or adjacent property from instability, damage or malfunction.

If, as authorized in this section, ACHD discontinues the operation of the Nine Mile Creek Flood Resilience Project, it shall be the responsibility of the City of Meridian, at its sole cost and expense to perform the necessary repairs to the Nine Mile Creek Flood Resilience Project and to make all necessary repairs to and otherwise restore, the Right-of-Way and/or property before ACHD will allow the Nine Mile Creek Flood Resilience Project to be placed back into service.

If the City of Meridian fails to immediately perform necessary emergency repairs to the Third Pressure Sewer Line and make all necessary repairs to and otherwise restore, the Right-of-Way and/or property adjacent the Right-of-Way, ACHD shall also have the right to make all necessary repairs to and otherwise restore, the Right-of-Way and/or adjacent property, on behalf of, and at the cost of City, and in such case, City, agrees to reimburse ACHD the reasonable costs and expenses thereof, including, without limitation, the use of staff and equipment of ACHD.

7. **Representations Regarding Authorizations.** City of Meridian represents, warrants, and covenants as of the date hereof, that:
- 7.1. City's execution, delivery, and consummation of this Agreement have been duly approved by the City Meridian city council in accordance with applicable law and any instruments governing City. No approval or consent of any person, firm, or other entity is required to be obtained by the City to permit it to consummate this Agreement.
 - 7.2. City of Meridian's use of the Right-of-Way will be in accordance with all Federal, State, and local laws, rules, regulations, codes, statutes, and subject to all Authorizations; and
 - 7.3. City of Meridian has obtained all Authorizations, approvals and consents necessary to use the Nine Mile Creek Flood Resilience Project in the Right-of-Way; and
 - 7.4. City of Meridian has the full right and authority under the Authorizations to enter into this Agreement and perform its obligations hereunder, and the same will not violate the authorizations or approvals (with or without the giving of notice or the lapse of time or both) or require any consent, approval, filing or notice under or under any provision of any law, rule, regulation, court order, judgment, or decree applicable to the City; and
 - 7.5. City of Meridian will perform all work related to access and use of the Third Pressure Sewer Line in a professional and workmanlike manner in accordance with industry standards.
 - 7.6. City of Meridian has the capacity to provide long-term operations and maintenance and a positive means for assessment of Nine Mile Creek Flood Resilience Project costs.

- 7.7. Any work performed by City of Meridian in ACHD's Right-of-Way shall be in full compliance with ACHD's rules and regulations as it presently exists, or as it may be hereafter amended.

8. Default and Termination.

- 8.1. In addition to the conditions of default and remedies set forth in Sections 5.5 and 5.6 above, if City of Meridian defaults in the performance of any obligations incumbent upon it to perform hereunder, ACHD may terminate this Agreement and the rights extended to City hereunder at any time, effective at the end of sixty (60) days following the date ACHD provided written notice of intent to terminate to City which notice shall specify in detail, each and every alleged default(s). City shall have such sixty (60) 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. Notwithstanding the foregoing, emergency repairs must be cured within one (1) day after receipt of such notice from ACHD unless delayed by exceptional circumstances beyond the City's control such as extreme weather or unavailability of necessary parts or equipment and shall not be subject to the sixty (60) day cure period outlined above.
- 8.2. Upon the failure of the City of Meridian to timely cure any default, ACHD may (i) terminate the Variance and/or this Agreement; (ii) take such action as it determines, in its sole discretion, to be necessary to correct the default; and/or (iii) pursue any legal remedies it may have under applicable law or principles of equity relating to such breach.
- 8.3. If ACHD defaults in the performance of its obligations under the terms and provisions of this Agreement in the time and manner required herein, City of Meridian shall only be entitled to non-monetary remedies, such as specific performance, declaratory relief, and injunctive relief.

9. Indemnification and Limitation of Liability.

- 9.1. ACHD SHALL NOT BE LIABLE TO CITY OF MERIDIAN OR ANY THIRD PARTY FOR REIMBURSEMENT OR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO, ANY DAMAGES ARISING OUT OF ANY CLAIM FROM ANY CUSTOMER FOR LOSS OF SERVICES) ARISING UNDER THIS AGREEMENT OR FROM ANY BREACH OF THIS AGREEMENT.
- 9.2. Each party shall be responsible only for the expenses and against suites, actions, claims or losses of every kind, nature and description, including costs, expenses and attorney fees caused by or arising out of any negligent acts by its officers, employees, agents or contractors while acting within the course and scope of their employment.
- 9.3. When a party has actual knowledge of a claim falling within the other party's obligations, such party shall promptly notify the other party and provide reasonable

assistance and information appropriate to the defense of the claim(s). Nothing contained herein shall operate as a limitation on the right of any party to bring an action for damages, including consequential damages, against any third party (i.e., any person other than ACHD, City, and their respective appointed or elected officials, officers, directors, agents, employees, contractors, and partners) based on any acts or omissions of such third party as such acts or omissions may affect Right-of-Way or the construction, operation, repair, or maintenance of the Nine Mile Creek Flood Resilience Project.

- 9.4. For any claims or actions arising out of failures or neglects occurring during the Term of this Agreement, City's obligations pursuant to this Section 9 shall survive the termination of this Agreement.

10. **Compliance with Law, Waste and Nuisance Prohibited.** In connection with City of Meridian's use of the Right-of-Way, throughout the term of this Agreement, the City 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 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. City of Meridian 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

11. Insurance.

- 11.1. City of Meridian, or its contractor, at its sole cost and expense shall maintain public liability and property damage insurance with a minimum liability limit of One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the aggregate insuring to such limits against all liability of City arising out of and in connection with its use or occupancy of the Right-of-Way hereunder. During the Term, City, or its contractor, shall maintain not less than the following insurance:

Type of Coverage	Amount of Coverage
Worker's Compensation Insurance	Statutory Amount
Employer's Liability Occupational Disease and Bodily Injury Insurance	\$1 million each accident \$1 million disease each employee \$1 million disease-policy limit
Commercial General Liability Insurance, including premises-operations, products/completed operations, independent contractors, contractual (blanket), broad form property damage, with umbrella excess liability (collectively, "Comprehensive Coverage")	Combined single limit personal injury and property damage on an occurrence policy form with policy amounts of (i) not less than \$1 million per occurrence (without a limitation on aggregate amount); or (ii) not less than \$1 million per occurrence with an aggregate annual amount of not less than \$3 million
Automobile Liability Insurance for owned, hired and non-owned autos	\$1 million combined single limit bodily injury/property damage

11.2. Prior to commencement of any work pursuant to this Agreement or any subsequent Addendum, the City of Meridian must furnish to ACHD the applicable certificates of insurance identifying the certificate holder as Additional Insured as provided in Section 11.2, and stating that the insurer will endeavor to notify ACHD at least thirty (30) days prior to cancellation of, or any material change in, the coverage provided. On or before January 1st of each year during the Term, and upon the request of ACHD at any time, City will provide ACHD with a certificate of insurance indicating that the required insurance in the required amounts is in full force and effect.

11.3. The foregoing insurance requirements are not intended to and shall not in any manner limit or qualify the liabilities and obligations of the City, or its contractor, under this Agreement.

12. **Acknowledgment.** Notwithstanding any other provision of this Agreement, City of Meridian acknowledges as follows (i) Nothing in this Agreement shall be construed to allow City any waiver or relief from any of the processes, rules and regulations that the City must follow in order to comply with ACHD rules, regulations or to obtain any future addendums or other approvals; (ii) Nothing herein shall be construed to grant any legal entitlement or vest any right to the City; (iii) Nothing in this Agreement shall be construed to create any monetary liability against ACHD; and (iv) Nothing in this Agreement shall be construed to provide any claim or benefit to a third party.

13. **City of Meridian Assumes Risk.** City of Meridian acknowledges that any and all risk associated with the Nine Mile Creek Flood Resilience Project lies solely with the City and any other conditions presently known or unknown. City assumes all risks and acknowledges that it is solely responsible for ensuring that the Nine Mile Creek Flood Resilience Project is designed, constructed, operated and maintained in accordance with any and all applicable laws, ordinances, regulations, and policies.
14. **Assignment.** City of Meridian cannot sell, assign or otherwise transfer this Agreement, the Variance granted by ACHD to City hereunder, or any of its rights hereunder except with the prior written consent of ACHD, in its sole discretion. In the event of any assignment approved by ACHD, the assignee shall assume all obligations, warranties, covenants and agreements of City herein contained.
15. **Successors and Assigns.** This Agreement may be assigned upon written consent of the parties, and such consent shall not be unreasonably withheld. All provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, successors and assigns and shall survive any transfer or assignment by a party or their heirs, successors or assigns. This Agreement shall remain effective notwithstanding the expiration, cancellation, termination or completion of this Agreement as may be necessary for any party to enforce the terms and provisions of this Agreement.
16. **Facility Location.** ACHD reserves the right to designate the location of the Nine Mile Creek Flood Resilience and related facilities to minimize the number of cuts or openings in the public Right-of-Way for the purposes granted by this Agreement.
17. **Recordation and Term.** Upon execution, this Agreement and any subsequent Addendum shall be recorded by ACHD in the official Real Property Records of Ada County, Idaho.
18. **No Title in Public Right-of-Way.** City of Meridan shall have no right, title or interest in or to the Right-of-Way other than a temporary right to locate Nine Mile Creek Flood Resilience Project pursuant to this Agreement.
19. **No Costs to ACHD.** Any and all costs and expenses associated with any construction or installation of the Nine Mile Creek Flood Resilience Project in the Right-of-Way, or the repair, operation, and maintenance thereof, or the relocation of Nine Mile Creek Flood Resilience Project, shall be at the sole cost and expense of the City of Meridian.
20. **Notice.**
 - 20.1 Any and all notices given by any of the parties hereto shall be in writing and deemed delivered when either: (i) delivered personally, or (ii) deposited in the United States Mail, certified, return receipt requested, postage prepaid; and, in any case, addressed to the other party at the address set forth in

Section 1, or at such other mailing address as may be provided by written notice of such change given to the other in the same manner as above provided.

20.2 Any party may change its notice address(es) by written notice to the other parties.

20.3 Notice shall be effective on the date of the addressee's receipt or refusal, as the case may be.

21. **Dispute Resolution.** Except as otherwise specifically provided in or permitted by this Agreement, all disputes, differences of opinion or controversies arising in connection with this Agreement shall first be resolved through good faith negotiation to arrive at an agreeable resolution. If, after negotiating in good faith for a period of thirty (30) calendar days, or any agreed further period, the parties are unable to resolve the dispute, then the parties may seek resolution by exercising any rights or remedies available to any party at law or in equity. Notwithstanding the foregoing, this provision shall not apply to the extent ACHD seeks injunctive relief to enforce any of its rights or remedies set forth in this Agreement.

22. **Miscellaneous.**

22.1 **Independent Party/Relationship.** The relationship between the parties shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes. The parties 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.

22.2 **Applicable Law.** This Agreement shall be interpreted and enforced under the laws of the State of Idaho without regard to its conflicts of law provisions.

22.3 **Jurisdiction.** The state courts of the state of Idaho shall have exclusive jurisdiction of any suit, dispute, claim, demand, controversy, or cause of action that the parties may now have or at any time in the future claim to have based in whole or in part or arising from the negotiations, execution, interpretation, or enforcement of this Agreement. The parties submit to the in personal jurisdiction of the State, to venue in the state courts within the State, and consent to service of process being affected upon them by certified mail sent to the addresses set forth in this Agreement

22.4 **Superseding Effect.** With respect to all matters covered by this Agreement, this Agreement shall supersede previous proposals by the City of Meridian and previous actions of ACHD staff and the Commission, whether or not formalized into writing.

- 22.5 **Amending Effect.** If any provision of this Agreement is unenforceable, it shall be deemed stricken from this Agreement and shall have no effect on any other provision. 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. This Agreement shall, to the extent of any conflict with any ACHD conditions of Approval, modify, amend and supplement the same
- 22.6 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of parties and their respective representatives, successors and assigns.
- 22.7 **Drafting.** All parties have been represented by counsel and no party shall be deemed to be the drafter of this document for purposes of interpreting an ambiguity against the drafter.
- 22.8 **No Third-Party Beneficiaries.** This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create any third-party beneficiary of this Agreement.
- 22.9 **No waiver.** No waiver shall be valid unless in writing and signed by the party against whom enforcement is sought. No waiver of any breach or obligation shall constitute a waiver of any subsequent breach or obligation.
- 22.10 **No liens.** City of Meridian shall allow no liens or encumbrances in any fashion to attach to or encumber the Nine Mile Creek Flood Resilience Project located within ACHD's Right-of-Way to any property, real or personal, owned by ACHD.
- 22.11 **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. 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.
- 22.12 **Headings.** The headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.
- 22.13 **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 instrument.

- 22.14 **Incorporation by Reference.** The Recitals, Approvals, Exhibits and all subsequent Addendums to this Agreement are incorporated by reference into the body of this Agreement as if such Recitals, Approvals, Exhibits and Addendums were set forth in their entirety in this Agreement.
- 22.15 **Time of the Essence.** Time shall be of the essence for all events and obligations to be performed under this Agreement.
- 22.16 **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. If ACHD or City is precluded from committing to make certain future payments due hereunder, this Section will apply. In the event that despite the best efforts of ACHD or City, ACHD or City determines that funds for any amounts due under this Agreement will not be available or cannot be obtained during any succeeding fiscal period, ACHD or City may terminate this Agreement prior to the commencement of such succeeding fiscal period by giving written notice to the other party of such determination at least 60 days prior to the first day of such succeeding period for which an appropriation has not been made by ACHD or City.
- 22.17 **Entire Agreement.** This Agreement, including all Exhibits referred to herein, sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, all prior or contemporaneous agreements, representations, statements, negotiations, and undertakings written or oral.
- 22.18 **Amendments.** This Agreement and any of the provisions hereof may not be amended, altered, or added to in any manner except by a written document signed by an authorized representative of each party.
- 22.19 **Authority.** 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. Each person executing the Agreement on behalf of City of Meridian represents and warrants due authorization to do so on behalf of the applicable party comprising the City, and that upon execution of this Agreement on behalf of City, the same is binding upon, and shall inure to the benefit, of City and each entity that comprises the City.

Signature page follows.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the day and year first above written. Notary acknowledgments follow this signature page.

ACHD:

ADA COUNTY HIGHWAY DISTRICT,
a body politic and corporate of the State of
Idaho

By: 

Its: President

CITY OF MERIDIAN:

CITY OF MERIDIAN, an Idaho municipal
corporation

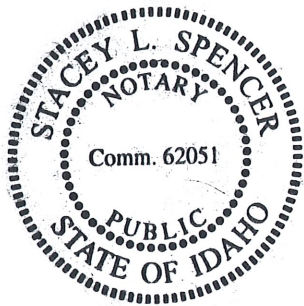
By: _____

Its: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this 14th day of January, 2025, before me, the undersigned notary public for said state, personally appeared Miranda Gold, known or identified to me (or proven on the basis of satisfactory evidence) to be the President of the County of Ada, State of Idaho, 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 in this certificate first above written.



Stacey L. Spencer
Notary Public
Residing at Boise ID
Comm. Expires August 13, 2031

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2025, before me, the undersigned notary public for said state, personally appeared _____, known or identified to me (or proven on the basis of satisfactory evidence) to be the _____ of the City of Kuna, State of Idaho, and acknowledged to me that the **City of Meridian, State of Idaho** executed the same.

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

Notary Public
Residing at _____
Comm. Expires _____

EXHIBIT A

Depiction of Nine Mile Creed Flood Resilience Project

[See attached]