

Reimbursement
CITY UTILITIES REIMBURSEMENT AGREEMENT
Meridian Town Center Phase 3

This CITY UTILITIES REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into this _____ day of February 2021 (“**Effective Date**”), by and among the CITY OF MERIDIAN, a municipal corporation of the State of Idaho (“**City**”) and Meridian CenterCal, L.L.C., a Delaware limited liability company, or its assigns (“**Developer**”). City and Developer may be referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties**” as warranted under the circumstances.

RECITALS

A. Developer is developing a retail complex facility at the intersection of Eagle Road and East Fairview Avenue in Meridian, Idaho.

B. Developer entered into that certain Sales Tax Anticipation Revenue Reimbursement Agreement with the Idaho Transportation Department (“**ITD**”) and the Ada County Highway District (“**ACHD**”) dated effective September 23rd, 2011, as amended (“**STAR Agreement**”) in connection with Developer’s retail complex facility.

C. Pursuant to the STAR Agreement, Developer is planning to construct certain improvements to Eagle Road, an ITD facility, known as the “Phase 3” improvements, as generally described and set forth in the STAR Agreement (the “**Phase 3 Eagle Road Improvements**”).

D. City has identified certain Utility Improvements (defined below), located within ITD’s right-of-way, that City desires to be carried out concurrently with the Phase 3 Eagle Road Improvements being carried out by Developer.

F. The Parties desire to enter into this Agreement to reimburse Developer for costs incurred by Developer in connection with the installation of the Utility Improvements on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties and the recitals set forth above, which are hereby acknowledged by the Parties as true and correct and incorporated herein, the Parties hereby agree as follows:

1. Water Main Improvements.

- a) City desires to complete the abandonment and relocation of certain water main infrastructure utilities as further described in Exhibit A, attached hereto and incorporated herein (the “**Utility Improvements**”), and requests that the Utility Improvements be considered for inclusion by the Developer in the Phase 3 Eagle Road Improvements project. City will design and engineer the Utility Improvements and provide Developer with final drawings and specifications for the construction of the Utility Improvements (the “**Construction Documents**”) on or before March 1, 2021. If City timely delivers the Construction Documents, Developer agrees to include the construction of the Utility Improvements, in accordance with the Construction Documents, in the

bid package for the Phase 3 Eagle Road Improvements being issued by Developer pursuant to the STAR Agreement and subject to the terms and conditions set forth in this Agreement.

- b) The Parties acknowledge and agree that Developer's obligation to bid the Utility Improvements and construct the Utility Improvements, as set forth in this Agreement, is expressly conditioned on: (i) ITD's written approval of the Utility Improvements and Construction Documents; and (ii) Developer moving forward with and constructing the Phase 3 Eagle Road Improvements.
- c) City's current estimated cost for the Utility Improvements is Eight Hundred Fifteen Thousand Five Hundred Dollars (\$815,500.00); however, the Parties acknowledge and agree this is only an estimate and the actual cost of the Utility Improvements may be greater or less than City's estimate.
- d) Promptly after the bidding of the Phase 3 Eagle Road Improvements pursuant to the STAR Agreement, Developer shall furnish City with: (i) an abstract of all bids received for the Utility Improvements; (ii) the City's portion of the bid that Developer proposes for inclusion of the Utility Improvements into the construction contract for the Phase 3 Eagle Road Improvements (the "**Utility Bid**"); and (iii) the date that City must respond to Developer, which date must not be less than five (5) business days after City's receipt of the bid abstract and Utility Bid (the "**Response Deadline**"). City agrees to promptly review the information provided by Developer, and Developer agrees to reasonably consult with City regarding the Utility Bid.
- e) On or before the Response Deadline, City will provide Developer with a written notice stating that: (i) City approves the Utility Bid ("**Approval Notice**") or (ii) City does not approve the Bid ("**Disapproval Notice**"). If City timely delivers an Approval Notice, then Developer agrees to accept the Utility Bid and include the same in the award of the construction contract for the Phase 3 Eagle Road Improvements. If City timely delivers a Disapproval Notice, then this Agreement will terminate and no Party will have any further obligations hereunder. **City agrees that the City's failure to deliver a Disapproval Notice to Developer prior to the Response Deadline for any reason will constitute City's delivery of an Approval Notice as of the Response Deadline.**
- f) City acknowledges that changes may be necessary for the proper and complete construction of the Utility Improvements, including, but not limited to, changes made necessary by site conditions and/or errors and omissions in the Contract Documents. City agrees to promptly respond to any request by Developer for a change order related to the Utility Improvements, and City agrees to respond by any deadline identified in the change order request (which deadline must not be less than five (5) business days after City's receipt of the request, absent urgent circumstances). City agrees that it will not unreasonably withhold its approval of any change order request. Change orders deemed reasonable would be: changes directed by the City of Meridian in writing, changes reasonably required by unforeseen site conditions, changes reasonably required by errors or omissions in the Contract Documents, and changes reasonably required by force majeure events. Additionally, prices of change order must represent market value for work to be performed (given the circumstances). If City does not timely approve any change order request, City will cooperate with Developer to promptly resolve City's concerns. Developer will not be under any obligation to incur any expense related to the Utility Improvements unless City first agrees to reimburse Developer for the expense.
- g) Upon substantial completion of the Utility Improvements, Developer will invoice City for the amount of the Utility Bid and the amount of any change orders approved by City (or that should have been approved by the City under this Agreement). City will pay the invoice in full within thirty (30) days of City's receipt thereof.

- h) Developer will assign all of the construction contractor’s representations and warranties with respect to the Utility Improvements to City, and City agrees that City will look to the construction contractor, and not Developer, for enforcement of the representations and warranties.

2) **General Terms.**

- a) Reimbursement Funds. City represents and warrants that City has allocated and appropriated all funds necessary to fully reimburse the Developer for the Utility Improvements.
- b) Limited Effect of Agreement. The purpose of this Agreement is to set forth the terms for reimbursement to Developer for installing the Utility Improvements. This Agreement imposes obligations on City to reimburse Developer for Utility Improvements upon substantial completion of the improvements and invoice to City, as described herein. This Agreement does not alter the terms in the STAR Agreement or impose any new obligations or liabilities on Developer, regarding the design or installation of improvements or otherwise. This Agreement does not alter any City approvals related to Developer’s projects. This Agreement does not alter Developer’s right to include any unreimbursed “Project Costs” (as that term is defined in the STAR Agreement) that Developer incurs as a result of this Agreement in a sales tax rebate claim for reimbursement pursuant to the STAR Agreement. This Agreement does not provide any new rights or remedies to City. The Parties acknowledge and agree that the Utility Improvements are included within the “approved transportation improvements” described in the STAR Agreement.
- c) Entire Agreement. This Agreement sets forth the entire understanding and agreement of the Parties with respect to the reimbursement contemplated herein. Other agreements referenced herein are unaffected by the terms in this Agreement.
- d) Severability. If any provision of this Agreement will be held or deemed to be or will, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction because it conflicts with any other provision or provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.
- e) Notices. Except as otherwise provided in this Agreement, all notices, certificates or other communications hereunder will be sufficiently given when in writing and either mailed by first class mail, postage prepaid, with proper address as indicated below or sent by electronic mail. Any Party may, by written notice, designate any address or addresses to which notices, certificates or other communications to it will be sent when required as contemplated by this Agreement.

City
City of Meridian
Attn: City Attorney’s Office
33 E. Broadway Ave.
Meridian, Idaho 83642

Developer:
Meridian CenterCal LLC
Attn: Sean Dennison
1960 E. Grand Avenue, Suite 400
El Segunda, CA 90245

Givens Pursley LLP

Attn: Jeff Bower
601 W. Bannock Street
Boise, ID 83702

Notice shall be deemed given upon actual receipt (or attempted delivery if delivery is refused), if personally delivered or rejected.

- f) Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which will be an original and all of which will constitute but one and the same instrument.
- g) Governing Law. This Agreement will be governed exclusively by and construed in accordance with the laws of the State of Idaho.
- h) Exhibits. All exhibits hereto are hereby incorporated by reference as if fully set forth herein.

[end of text; signatures and exhibits follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement, effective as of the Effective Date.

CITY:

CITY OF MERIDIAN, a municipal corporation of the State of Idaho

By: Robert E. Simison
Its: Mayor

DEVELOPER:

Meridian CenterCal, L.L.C., a Delaware limited liability company



By: *Sean Dennis*
Its: *Senior Vice President & General Counsel*

Exhibit A

Utility Improvements

The following modifications to the water main are between Franklin Road and Leslie Drive and constitute the Utility Improvements, which will be further detailed in the Construction Documents:

- Starting just south of E. Lanark Drive to south of the Boise Valley Railroad right-of-way the water main will be relocated/replaced.
- The existing water main will be left in place across the Boise Valley Railroad right-of-way.
- The water main will be relocated from just north of the Boise Valley Railroad right-of-way to East Commercial Court.
- At East Commercial Court a new crossing will be installed across Eagle Road using an existing pipe as a sleeve.
- The water main will be abandoned from East Commercial Court to approximately 125 feet south of Leslie Drive
- At Pine Avenue a new crossing will be installed across Eagle Road using an existing pipe as a sleeve. Some pipe modifications are required along Pine Avenue.
- At East Florence Street a new crossing will be installed across Eagle Road using an existing pipe as a sleeve.
- At just south of Fairview Avenue a new crossing will be installed across Eagle Road using an existing pipe as a sleeve.
- The water main will be relocated along Eagle Road from approximately 165 feet south of Leslie Drive to Leslie Drive. Additionally, a water main will be routed through the Stokesberry Subdivision (NW corner of River Valley Street and Eagle Road) to an existing water main in the Stokesberry Subdivision parking lot.