

INTERAGENCY AGREEMENT FOR:
ROADWAY CONSTRUCTION / WATER AND SEWER CONSTRUCTION
TEN MILE RD AND VICTORY RD
ACHD PROJECT NO. 319038

THIS INTERAGENCY AGREEMENT FOR ROADWAY CONSTRUCTION/WATER AND SEWER CONSTRUCTION ("Agreement") is made and entered into this _____ day of _____, 2021, by and between the ADA COUNTY HIGHWAY DISTRICT, a highway district organized under the laws of the State of Idaho ("DISTRICT" or "ACHD"), and the CITY OF MERIDIAN, a municipal corporation organized under the laws of the State of Idaho ("MERIDIAN" or "City"), regarding ACHD Project no. 319038.

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 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 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; and

WHEREAS, DISTRICT and MERIDIAN desire to undertake a cooperative effort to incorporate into the DISTRICT'S road construction projects known as TEN MILE RD AND VICTORY RD ("Project" or "Project Boundaries"), certain modifications or improvements to City owned facilities, including ***constructing water and sewer services, adjusting water valve boxes and covers and sewer manholes to grade, and correcting potable/non-potable spacing issues*** (collectively, "City Water and Sewer Improvements") as detailed in Project no. 319038, to be constructed pursuant to a separately-executed agreement between DISTRICT and the selected Contractor ("CONTRACT"); and

WHEREAS, DISTRICT is willing to accommodate MERIDIAN'S request by including the City Water and Sewer Improvements in the Project plans, subject to the terms, conditions and obligations set forth in this Agreement and so long as DISTRICT receives assurances by the City that it will fully reimburse DISTRICT for all actual costs including, without limitation, any indirect costs and expenses that DISTRICT incurs as a result of the additional work attributable to the modification or installation of the City Water and Sewer Improvements within the Project Boundaries; and

NOW, THEREFORE, in consideration of the foregoing premises, mutual covenants and agreements 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 City Water and Sewer Improvements referenced herein, which CONTRACT shall include, *inter alia*, a provision that all work required for the City Water and Sewer Improvements shall be performed in conformance with the most current edition of the Idaho Standards for Public Works Construction (ISPWC) and the most current City of MERIDIAN Supplemental Specifications to the ISPWC. It is hereby specifically agreed that:
 - i. Adjustment of water valve boxes and covers to grade shall include reconstruction in conformance with ISPWC Section 404, and
 - ii. Adjustment of sewer manholes to grade shall include reconstruction in conformance with ISPWC Section 602.
- b. Provide MERIDIAN with a complete set of combined bid documents for the roadway reconstruction, and for the City Water and Sewer Improvements.
- c. Furnish MERIDIAN with an abstract of all bids received, and obtain MERIDIAN'S written concurrence with DISTRICT'S recommendation for award of the CONTRACT prior to making such award. MERIDIAN'S concurrence shall specifically acknowledge that the City Water and Sewer Improvements are and shall be subject to the terms and conditions of this Agreement. If MERIDIAN does not concur, DISTRICT shall remove the City Water and Sewer Improvements and if necessary, rebid the Project. MERIDIAN shall be responsible and shall reimburse DISTRICT for any and all costs suffered by DISTRICT attributable to the removal of the City Water and Sewer Improvements from the Project and if applicable, the rebidding of the Project.
- d. Include in the CONTRACT, a term providing that MERIDIAN will have the right and authority to work directly with the Contractor to resolve any claims relating in any way to the City Water and Sewer Improvements and that any such claims will be reviewed, approved or denied by MERIDIAN including enforcement of the two (2) year warranty period to be started at the date described in the final acceptance letter from MERIDIAN.
- e. Coordinate with MERIDIAN should any changes be made to DISTRICT's portion of the CONTRACT or work pursuant thereto that does or may impact the City Water and Sewer Improvements.

- f. Make monthly progress payments and the final CONTRACT payment to the Contractor in conformance with the terms of the construction CONTRACT.
- g. Submit to MERIDIAN a copy of each design consultant billing attributable to the City Water and Sewer Improvements if applicable and Contractor progress payment estimate, and the final CONTRACT payment estimate, as such estimates are approved by DISTRICT after obtaining MERIDIAN'S concurrence regarding MERIDIAN'S portion of the CONTRACT, together with an invoice for MERIDIAN'S share of the construction CONTRACT costs earned by and to be paid to the Contractor.
- h. As applicable, provide for the reference and replacement of all pre-existing survey monuments within the Project.
- i. Provide the field survey and grade control necessary for construction of the roadway. Centerline or offsets and stationing shall be established prior to the City staking any sanitary sewer or potable water service lines, water valve boxes, manhole locations, and other City facilities.
- j. At the conclusion of the Project, submit to MERIDIAN written documentation of expenditures with an invoice for payment of all costs and expenses the DISTRICT incurs, in addition to those provided under paragraph 1.g. above, as a result of the additional work attributed to the City Water and Sewer Improvements within the Project Boundaries, including but not limited to, costs or changed conditions, plan errors and omissions, and delays attributable to design and/or installation of the City Water and Sewer Improvements.
- k. Indemnify, save harmless and defend regardless of outcome, MERIDIAN from 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 DISTRICT or DISTRICT'S officers, employees, agents or contractors while acting within the course and scope of their employment, which arise from or which are in any way connected to the City Water and Sewer Improvements. Such indemnification hereunder by DISTRICT shall in no event cause the liability of DISTRICT for any negligent act to exceed the amount of loss, damages, or expenses of attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of MERIDIAN. This duty to defend, indemnify and hold harmless is subject to the limitations of Idaho law, including Article VII Section 4, Idaho Constitution and Idaho Code Title 6 Chapter 9 (the Idaho Tort Claims Act), and to any other limitations set forth in the Agreement.

2. MERIDIAN SHALL:

- a. Provide the inspection, field survey and grade control required for the installation of all City Water and Sewer Improvements incorporated into the Project and installed and adjusted under the CONTRACT and provide copies of appropriate tests and

construction diaries to the District Project Representative as designated by DISTRICT.

- b. Provide DISTRICT with the special provisions if applicable, and stamped plans, bid quantities and an Engineers Estimate (or pursuant to Paragraph 1.g. pay the DISTRICT the actual cost if the DISTRICT'S design consultant prepares the same) for the City Water and Sewer Improvements to be incorporated into the Project and included in the bid documents for the CONTRACT (all work required for the City Water and Sewer Improvements to be performed in accordance with the most current edition of the Idaho Standards for Public Works Construction (ISPWC), the City's Supplemental Specifications to the ISPWC, and the City's Revisions to the Standard Specifications).
- c. Remit to DISTRICT, within thirty-five (35) calendar days after the date of any invoice referenced in paragraph 1.g., all funds for which MERIDIAN is responsible pursuant to the approved progress payment estimate and the final CONTRACT payment estimate.
- d. Remit to DISTRICT, within thirty-five (35) calendar days after the date of invoice referenced in paragraph 1.j., all funds for which MERIDIAN is responsible pursuant to this Agreement.
- e. Reimburse DISTRICT five percent (5%) of MERIDIAN'S construction costs attributable to the City Water and Sewer Improvements as payment toward the additional costs incurred by DISTRICT, including overhead and benefits, and project administration costs which include but are not limited to: public advertisement of the Project, supplying bid plans, supplying construction plans, preparing and holding the preconstruction meeting, generating monthly pay estimates and paying the Contractor, preparing change orders, general construction project oversight, and maintaining construction project files.
- f. Reimburse 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 MERIDIAN'S project costs as they relate to the total project construction costs.
- g. Provide (at City's sole costs) trench compaction testing for the City Water and Sewer Improvements from one-foot (1') 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 one thousand (1,000) lineal feet, minimum one (1) for every three (3) transverse trenches; provide all re-testing required in any area that does not meet CONTRACT requirements; and provide copies of tests for the area along the alignment of the pipeline to the designated DISTRICT representative.
- h. Be liable for the cost of repairing any trench failure attributable to the City Water and Sewer Improvements within the Project Boundaries, and be liable for and indemnify,

defend and hold DISTRICT harmless for any and all costs, claims, and damages resulting from any such trench failure.

- i. Reimburse DISTRICT for any additional costs to DISTRICT over and above costs specifically enumerated herein, where such costs are attributable to the installations, adjustments, relocations and abandonments of the City Water and Sewer Improvements or to the removal of any or all items from the CONTRACT that are associated with the installation of the City Water and Sewer Improvements.
- j. Indemnify, save harmless and defend regardless of outcome, DISTRICT from 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 MERIDIAN or MERIDIAN'S officers, employees, agents or contractors while acting within the course and scope of their employment, which arise from or which are in any way connected to the City Water and Sewer Improvements. Such indemnification hereunder by MERIDIAN shall in no event cause the liability of MERIDIAN for any negligent act to exceed the amount of loss, damages, or expenses of attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of DISTRICT. This duty to defend, indemnify and hold harmless is subject to the limitations of Idaho law, including Article VII Section 4, Idaho Constitution and Idaho Code Title 6 Chapter 9 (the Idaho Tort Claims Act), and to any other limitations set forth in the Agreement.
- k. Work directly with the Contractor to resolve any claims relating in any way to the City Water and Sewer Improvements; any and all such claims will be reviewed, approved or denied by MERIDIAN and MERIDIAN shall indemnify, save harmless and defend regardless of outcome, DISTRICT from 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 and all such claims regardless of the outcome of the City's efforts to resolve said claims with the Contractor.

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 amount to be reimbursed to DISTRICT by MERIDIAN for MERIDIAN'S portion of the Project 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. DISTRICT shall obtain MERIDIAN'S approval prior to commencement of any change order work involving the installations, adjustments, relocations and abandonments of City water or sewer facilities.
- d. Prior to commencement of work by the Contractor, the parties will, together with the Contractor, inspect within the entire Project Boundaries for the purpose of reviewing

the Project to locate any unstable areas and to 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.
- 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.
- l. 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 or 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 DISTRICT and MERIDIAN.

- 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. This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third-party beneficiary rights in any person not a party hereto.
- t. All parties have been represented by legal counsel, and no party shall be deemed to be the drafter of this Agreement for purposes of interpreting an ambiguity against the drafter.
- u. Time shall be of the essence for all events and obligations to be performed under this Agreement. Without limiting the foregoing, in the event that MERIDIAN does not timely comply with any of its obligations hereunder, DISTRICT shall have no obligation whatsoever to incorporate, facilitate, and/or complete the City Water and Sewer Improvements, regardless of whether prior approval has been given by DISTRICT to MERIDIAN.

IN WITNESS HEREOF, the parties hereto have executed this Agreement on the day and year herein first written.

ATTEST:	ADA COUNTY HIGHWAY DISTRICT
By:	By:
Bruce Wong Director	Kent Goldthorpe President, Board of Commissioners
ATTEST:	CITY OF MERIDIAN
By:	By:
Chris Johnson City Clerk	Robert E. Simison Mayor

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

