

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City Clerk  
City of Meridian  
33 E. Broadway Avenue  
Meridian, ID 83642

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**TEMPORARY CONSTRUCTION EASEMENT AND  
AGREEMENT FOR CONNECTION TO SEWER SERVICE:  
126 E IDAHO AVE, MERIDIAN, ID**

This TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT FOR CONNECTION TO SEWER SERVICE (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho (“City”), and Circle S Meridian LLC, owner of the property at 126 E Idaho Ave, Meridian, Idaho (“Property Owner”) (collectively, “Parties”).

**WHEREAS**, Property Owner is the owner of the property at 126 E, Idaho Avenue, Meridian, Idaho, Ada County parcel no. R5672000745, more particularly described as follows:

**W 20’ OF LOT 7 BLK 5**

(“Property”);

**WHEREAS**, the sewer line serving Property is currently located in the alley to the north of the Property;

**WHEREAS**, in Spring 2024, pursuant to its authority under Idaho Code section 50-332, the City of Meridian will begin a public works project that includes installing a new sewer main along E. Idaho Avenue, from Meridian Road to 6th Street (“Project”);

**WHEREAS**, to improve efficiency and long-term viability of sewer service to properties along E. Idaho Avenue from Meridian Road to 6th Street, including the Property, the City intends to reroute the plumbing serving Property to connect to the new sewer line along E. Idaho Avenue, and to cause such work to be completed at the City’s expense unless an unforeseen condition prevents such work; and

**WHEREAS**, Property Owner has accepted this offer and wishes to authorize City to include in the scope of work for the Project the rerouting of the plumbing serving the building at Property and its connection to the new sewer line, as generally depicted in *Exhibit A*, subject to field verification;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, and in consideration of the recitals above, which are incorporated herein, the Parties agree as follows:

## **I. COMMITMENTS BY CITY.**

- A. REPLUMBING SEWER SERVICES.** The City intends to bore under the building and re-plumb the building at the Property and connect it to the new sewer main to be placed in the right of way along E. Idaho Avenue. The sewer service will be six inches (6") in diameter and will be HDPE or PVC. The City will:
1. Complete such work at the City's sole expense. This work shall include restoration of the exterior and (if needed) interior of the Property to its general pre-Project condition, as nearly as is feasible.
  2. Contact Property Owner to provide details regarding scheduling, timeline, and the next steps for completion of this work.
  3. Select a general contractor who will hire a licensed plumber to install all related plumbing and infrastructure necessary to connect the building at Property to the new sewer main along E. Idaho Avenue. Such work shall be completed in accordance with the regulations of the Building Services Division of the City of Meridian Community Development Department, the City of Meridian Public Works Department, and any and all other applicable rules or laws.
  4. As practicable, provide notice to Property Owner of any need to access the Property and building thereon in order to complete City's obligations under this Agreement.
- B. UNFORESEEN CONDITIONS.** If there is an unforeseen condition that prohibits the replumbing of the existing service, the City will leave the existing plumbing connected to the sewer main in the alley to the north of the property. The sewer main in the alley shall remain in service until it reaches the end of its useful life or it is no longer cost effective for the City to maintain. The City shall have no obligation to maintain the sewer main beyond its useful life. If, in the City's sole discretion, it is deemed that the sewer main in the alley is approaching the end of its useful life or it is no longer cost effective for the City to maintain it, the property owner will be required to connect to the sewer main in the right-of-way along E. Idaho Avenue, at the property owner's sole expense, regardless of the duration of the life of the sewer main in the alley.
- C. PROVISION OF SEWER SERVICES.** At all times, City shall make sewer services available to the Subject Property, subject to necessary stoppages due to construction, and all applicable laws and City ordinances. City shall bill Property Owner for sewer usage according to the metering, accounting, and billing system in place under Meridian City Code and the policies and practices of the City of Meridian.
- D. WARRANTY.** City shall obtain a two (2) year warranty for the contractor's work. If, within the two (2) years following completion of the work, the Property Owner encounters defective workmanship with the work completed pursuant to this Agreement, Property Owner shall inform City, and City shall enforce the contractor's warranty. Neither City nor City's Contractor shall provide a warranty directly to Property Owner. This provision shall survive the expiration of this Agreement.

## II. COMMITMENTS BY PROPERTY OWNER.

- A. EASEMENT; RIGHT OF ENTRY.** Property Owner authorizes the City, its consultants, agents, employees and/or contractors, a temporary easement over and across the Property, and the right to enter the Property and all buildings thereon, in order to complete all necessary work to fulfill City's obligations under this Agreement. City shall have and hold the temporary easement and right of entry until the Project is complete. City's Project Manager shall provide to Property Owner a copy of the anticipated construction schedule. Property Owner shall notify the occupant(s) of the building located on Property of the terms of this Agreement and instruct such occupant(s) to provide access to City, its consultants, and/or its contractors as necessary to complete the work described by this Agreement.
- B. NO GUARANTEE.** Property Owner acknowledges that City may not elect to reroute the sewer service from the existing main in the alley to the new main in the right-of-way along E. Idaho Street. The City may decline to reroute the plumbing from the building on Property, if unforeseen conditions make such work not feasible, in City's sole discretion.
- C. PAYMENT FOR CITY SERVICES.** Property Owner shall pay to City all applicable fees for water and sewer services provided, as such fees are calculated and billed by City established by law or City policy or ordinance. The exclusive remedy for any disputes, objections, or appeals regarding such fees and costs shall be with the Board of Adjustment, under the procedures set forth in Meridian City Code.
- D. OPERATION AND MAINTENANCE.** Upon connection to and at all times Property is connected to the City's sewer system, regardless of the location of such connection, Property Owner shall be solely responsible for any and all costs related to operation and maintenance of all portions and functions of the plumbing between the sewer line and the Property served by the City sewer system.
- E. EXISTING ISSUES PROPERTY OWNER'S RESPONSIBILITY.** Property Owner shall be solely responsible for any repair, maintenance, or other work where the need for same is discovered by the work contemplated by this Agreement.
- F. RISK; HOLD HARMLESS; WARRANTY.** Property Owner acknowledges that work contemplated by this Agreement may carry risks of property damage, property loss, personal injury, illness, and/or death, some of which risks are unknown, and, with that knowledge, Property Owner hereby assumes all such risks and hazards, except as otherwise stated herein. Except as it relates to tortious conduct attributable to City, Property Owner shall save and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Property Owner or Property Owner's tenants, agents, employees, guests, and/or business invitees. Except as may be provided in any written warranty provided by the contractor completing the work contemplated by this Agreement, Property Owner shall be solely responsible for any structural, electrical, mechanical, or other malfunction or damage occurring after completion

of the work contemplated by this Agreement, and shall not make any claim or demand, or bring any cause of action against City for same.

### **III. GENERAL PROVISIONS.**

- A. TERM.** This Agreement shall become effective on the Effective Date first written above, and shall be effective through the earlier of completion of the Project or September 30, 2024, unless earlier extended or terminated by the Parties.
- B. RECORDATION.** City shall record this Agreement against the Property, at City's cost.
- C. TERMINATION.** If City determines that Property Owner has failed to comply with any term or condition of this Agreement, violated any of the covenants, agreements, and/or stipulations of this Agreement; engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement; the other Party shall have the right to terminate the Agreement by giving written notice to the defaulting party of its intent to terminate, and shall specify the grounds for termination. The defaulting party shall have seven (7) days after receipt of such notice to cure the default. If the default is not cured within such period, this Agreement shall be terminated upon mailing of written notice of such termination by the terminating party.
- D. TERMINATION OR RESCISSION BY PROPERTY OWNER.** If, prior to initiation of construction as part of Project, Property Owner terminates this Agreement, and/or rescinds Property Owner's acceptance of City's offer to assess and potentially reroute the service line, for any reason, the City shall not be responsible for any costs related to the Project or the Project's impact on Property, other than connecting the Property's existing plumbing to the rehabilitated main when complete.
- E. CITY NOT RESPONSIBLE FOR OTHER COSTS.** Property Owner acknowledges and agrees that except as explicitly stated in this Agreement, the City will not be responsible for any costs Property Owner may incur as a result of or otherwise attributable to the Project, whether such costs are related to known or unknown risks or factors. Specifically, without limitation, City shall not be responsible for any lost business or other revenue during or attributable to the Project, nor for any plumbing- or sewer-related costs following Project completion.
- F. DAY-TO-DAY COMMUNICATIONS.** Communication between Property Owner and City regarding day-to-day matters (e.g., issues related to construction, property entry, scheduling, etc.) shall occur via e-mail or telephone. City shall provide Property Owner the name, e-mail address, and telephone number of specific City personnel ("City Contact") who shall serve as the liaison between City and Property Owner for all day-to-day matters. Property Owner shall provide City the name, e-mail address, and telephone number of the specific person ("Property Owner Contact") who shall serve as the liaison between Property Owner and City for all day-to-day matters.

**G. ALL OTHER NOTICES.** All other notices required to be given by either of the parties hereto shall be in writing and be deemed communicated when sent via e-mail, personally served, or mailed via United States mail, to the following personnel and address:

If to City:

City Clerk, City of Meridian  
33 E. Broadway Ave.  
Meridian, Idaho 83642  
cityclerk@meridiacity.org

If to Property Owner:

CIRCLE S MERIDIAN LLC  
6835 N TOPAZ JEWEL PL  
MERIDIAN, ID 83642-000

Either Party may change its address for the purpose of this section by delivering to the other Party written notification of such change, establishing a new address for noticing purposes, in accordance with the requirements of this section.

**H. FORCE MAJEURE.** No Party will be liable for failure to perform any duty under this Agreement where such failure is due to or made impracticable by unforeseeable causes beyond the Parties' control and without the fault or negligence of the Parties, including, but not restricted to, acts of God or the public enemy, fire, flood, natural disaster, epidemic, strike, or order of any court or authorized agency.

**I. BINDING UPON SUCCESSORS.** Except as otherwise specifically provided herein, this Agreement shall be binding upon any and all owners of the Property, any and all subsequent owners thereof, and each and every other person acquiring an interest in the Property. Nothing herein shall, or shall be construed to, in any way prevent the sale or alienation of the Property, or any portion thereof, except that any sale or alienation shall occur subject to the provisions of this Agreement, and any successive owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

**J. SEVERABILITY.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any other provision or provisions contained herein.

**K. 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 rights in any person or entity not a party hereto.

**L. NO REAL PROPERTY INTEREST.** It is expressly understood that this Easement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Property to the City.

**M. ATTORNEY FEES.** Should any litigation be commenced between the Parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney fees as determined by such court. This provision shall be deemed to be a separate contract between the Parties and shall survive, *inter alia*, any default, termination, or forfeiture of this Agreement.

**N. ENTIRE AGREEMENT.** This Agreement sets forth all promises, inducements, agreements,

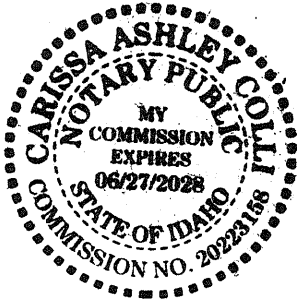
conditions, and understandings between City and Property Owner relative to the subject matter hereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between City and Property Owner, other than as are stated herein. Except as otherwise specifically provided herein, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless set forth in writing and duly executed by both Parties or their successors in interest.

- O. NON-WAIVER.** Failure of either Party to promptly enforce the strict performance of any term of this Agreement shall not constitute a waiver or relinquishment of any Party's right to thereafter enforce such term, and any right or remedy hereunder may be asserted at any time after either party becomes entitled to the benefit thereof, notwithstanding delay in enforcement. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- P. APPLICABLE LAW.** The validity, interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Idaho, including, without limitation, Article VIII, Section 3, of the Idaho Constitution. Venue shall be in the courts of Ada County, Idaho.
- Q. COMPLIANCE WITH LAWS.** Throughout the course of this Agreement, the Parties shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho, and the ordinances of the City of Meridian. The City's ordinances appertaining to the regulation, control, and use of its sewer and water systems, and any prospective amendments to and/or recodifications thereof, are specifically and without limitation incorporated into this Agreement as if set forth fully herein.
- R. ADVICE OF ATTORNEY.** Each party warrants and represents that in executing this Agreement, it has received independent legal and financial advice from its attorney and/or financial advisor, or has had adequate opportunity to seek such advice.
- S. WARRANTY OF AUTHORITY.** Each person executing and signatory to this Agreement represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of each respective party; that such person is, at the time of execution, duly authorized by the respective Party's governing body to bind such Party in all respects; and acknowledges and agrees that this Agreement is and shall be a valid and binding obligation upon the Parties to this Agreement.
- T. APPROVAL REQUIRED:** This Agreement shall not become effective or binding until approved by the City Council of the City of Meridian.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the Effective Date first written above.

PROPERTY OWNER  
CIRCLE S MERIDIAN LLC:

Marty Schindler  
Marty Schindler  
Manager



STATE OF IDAHO )  
 ) ss:  
County of Ada )

I HEREBY CERTIFY that on this 21<sup>st</sup> day of February, 2024, before the undersigned, a Notary Public in the State of Idaho, MARTY SCHINDLER personally appeared, proven to me to be the person who executed the said instrument, and acknowledged to me that he 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.

Carissa Colli  
Notary Public for Idaho

Residing at Meridian, Idaho

My Commission Expires: 6/27/2028

CITY OF MERIDIAN:

Attest:

\_\_\_\_\_  
Robert E. Simison, Mayor

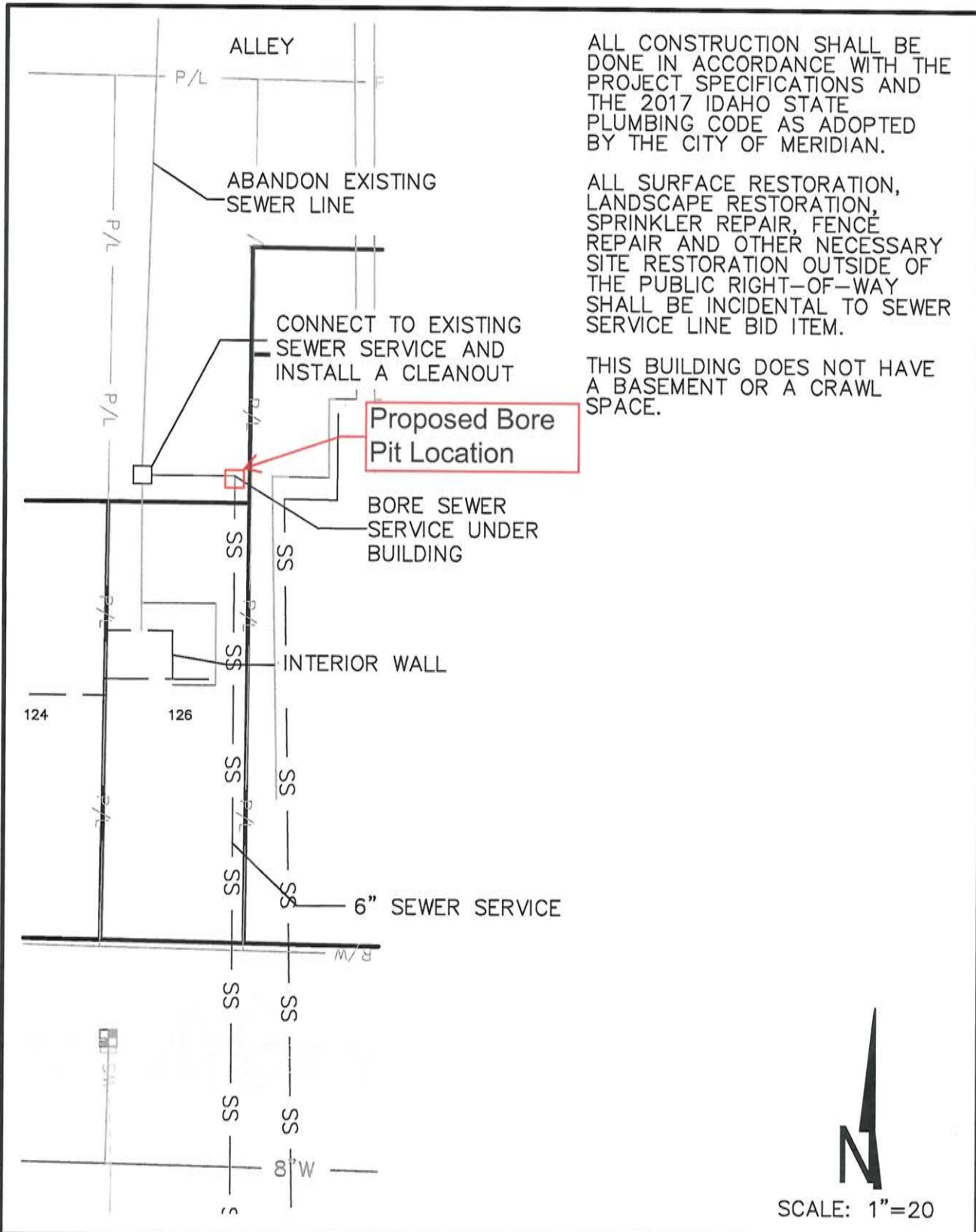
\_\_\_\_\_  
Chris Johnson, City Clerk

STATE OF IDAHO )  
 ) ss:  
County of Ada )

On this \_\_\_ day of \_\_\_\_\_, 2024, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, know or identified to me to be the Mayor and Clerk, respectively, of the City of Meridian, who executed the instrument or the person that executed the instrument of behalf of said City, and acknowledged to me that such City 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 for Idaho  
Residing at \_\_\_\_\_, Idaho  
My Commission Expires: \_\_\_\_\_

# Exhibit A



ALL CONSTRUCTION SHALL BE DONE IN ACCORDANCE WITH THE PROJECT SPECIFICATIONS AND THE 2017 IDAHO STATE PLUMBING CODE AS ADOPTED BY THE CITY OF MERIDIAN.

ALL SURFACE RESTORATION, LANDSCAPE RESTORATION, SPRINKLER REPAIR, FENCE REPAIR AND OTHER NECESSARY SITE RESTORATION OUTSIDE OF THE PUBLIC RIGHT-OF-WAY SHALL BE INCIDENTAL TO SEWER SERVICE LINE BID ITEM.

THIS BUILDING DOES NOT HAVE A BASEMENT OR A CRAWL SPACE.



SCALE: 1"=20

**CITY OF MERIDIAN**  
**SEWER AND WATER MAIN**  
**REPLACEMENT - E. IDAHO AVENUE**  
**126 E. IDAHO AVENUE**



SHEET  
 7  
 11/23