

CITY UTILITIES REIMBURSEMENT AGREEMENT

Meridian Town Center Phase 3

This CITY UTILITIES REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into this _____ day of _____ 2020 (“**Effective Date**”), by and among the CITY OF MERIDIAN, a municipal corporation of the State of Idaho (“**City**”); the IDAHO TRANSPORTATION DEPARTMENT, an executive department of the state of Idaho (“**ITD**”); and Meridian CenterCal, L.L.C., a Delaware limited liability company (“**Developer**”).

RECITALS

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

B. ITD and Developer are parties to that certain Sales Tax Anticipation Revenue Reimbursement Agreement dated September 23rd, 2011, as amended (“**STAR Agreement**”).

C. Pursuant to the STAR Agreement, Developer is constructing certain improvements to Eagle Road, the “Phase 3” improvements (the “**Phase 3 Eagle Road Improvements**”), within the scope and meaning set forth in the STAR Agreement.

D. City has identified certain City utility improvements that City desires to be included within the Phase 3 Eagle Road Improvements being carried out by Developer.

F. The parties desire to enter into this Agreement to address the terms for reimbursement to Developer for costs incurred by Developer in connection with the installation of the identified City utility improvements as set forth in this Agreement.

AGREEMENT

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

1. **Water Main Improvements.**

- a) City desires to complete the abandonment and relocation of certain water main infrastructure as described in Exhibit A (the “**Utility Improvements**”), and requests that the Utility Improvements be considered for inclusion in the Phase 3 Eagle Road Improvements. City will design the Utility Improvements and provide the drawings and specifications for the construction of the Utility Improvements (the “**Construction Documents**”). Developer agrees to include the construction of the Utility Improvement in accordance with the Construction Documents in the bid package for the Phase 3 Eagle Road Improvements.
- b) City’s current estimated cost for the Utility Improvements is eight hundred and fifteen thousand five hundred Dollars (\$815,500); 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.
- c) 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.

- d) On or before the Response Deadline, City will provided Developer and ITD with a written notice stating that: (i) City approves the Utility Bid (an "Approval Notice") or (ii) City does not approve the Bid (a "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 and ITD prior to the Response Deadline for any reason will constitute City's delivery of an Approval Notice as of the Response Deadline.**
- e) 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.
- f) 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.
- g) 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 look to the construction contractor, not Developer, for enforcement of the representations and warranties.

2) General Terms.

- a) Project Costs. ITD acknowledges and agrees that the Utility Improvements are included within the "approved transportation improvements" described in the STAR Agreement. City has allocated and appropriated all funds necessary to make each of the reimbursement payments to Developer contemplated in this Agreement. Further, ITD acknowledges and agrees that Developer may 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.

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

ITD:

IDAHO TRANSPORTATION DEPARTMENT, an executive department of the state of Idaho

By:

Its: _____

DEVELOPER:

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



By: Sean Dennison

Its: Senior Vice President and General Counsel

Exhibit A

Utility Improvements

The City will be making the following modifications to the water main between Franklin Rd and Leslie Dr along Eagle Rd. All modifications are on the west side of Eagle Rd except for the crossings across Eagle Rd.

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