

**MEMORANDUM OF AGREEMENT
CIVIC BLOCK DEVELOPMENT PROPOSAL**

This MEMORANDUM OF AGREEMENT (“Agreement”) is made this ___ day of _____, 2022 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Meridian Development Corporation, an urban renewal agency organized under the laws of the State of Idaho (“MDC”) and Meridian Caddis, LLC, a Michigan limited liability company registered to do business in Idaho (“Respondent”). The foregoing may be collectively referred to as “Parties” or individually as a “Party.”

WHEREAS, MDC in cooperation with the City issued a Request for Proposals (“RFP”) seeking proposals from interested parties for the development or redevelopment of the Civic Block property (the “Project”) containing parcels owned by the City and MDC;

WHEREAS, River Caddis Development, LLC, a Michigan limited liability company (the “Original Respondent”) submitted one of three proposals received and was selected by MDC and the City subject to certain contingencies;

WHEREAS, Respondent is wholly owned by Original Respondent or its principals and was formed by Original Respondent for purposes of entering into this Agreement and the Definitive Agreements (as defined in Article 2, below) and pursuing the Project;

WHEREAS, the Parties desire to describe the process necessary for the Respondent’s proposal to move forward;

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, the Parties agree as follows:

1. MDC and the City’s acceptance of the Original Respondent’s proposal was conditioned upon the attached list of contingencies which includes RFP and RFP addendum content, the Original Respondent’s proposal and presentations, as well as conditions discussed at MDC and City joint public meetings where Original Respondent was present (See Exhibit A attached hereto and incorporated by reference herein). The Parties acknowledge and agree to these contingencies and that they will be incorporated into the Definitive Agreements or survive the execution of the Definitive Agreements, as applicable.
2. The Respondent agrees that its Proposal will remain valid until the completion of negotiations and possible execution of (i) a purchase and sale agreement for the City property between the City, as seller, and MDC, as purchaser (the “City/MDC Purchase Agreement”); (ii) a purchase and sale agreement between MDC as seller, and Respondent, as purchaser, for the MDC property and the City property (the MDC/Respondent Purchase Agreement”); and (iii) an owner participation agreement for the entire Project property between MDC and Respondent, as developer (the “OPA”) (all of the aforementioned agreements in this paragraph are collectively referred to as the “Definitive Agreements”). The Parties acknowledge that the sale of the City property to MDC is subject to a public process and is a necessary component of the Definitive Agreements. The Parties acknowledge that the City cannot guarantee an outcome and/or commit to transfer of the city

property to MDC in advance of that public process.

3. This Agreement is governed by the laws of the State of Idaho, constitutes the entire understanding between the Parties and may not be modified except by written consent of all the Parties. The Parties agree to participate in the negotiation of the Definitive Agreements in good faith. This Agreement will automatically terminate if the Definitive Agreements acceptable to all parties are not executed by City, MDC and Respondent as applicable on or before 5:00 pm on December 31, 2022 (the “Negotiation Period Expiration Date”). If this Agreement is in effect, then between the Effective Date and the Negotiation Period Expiration Date, City and MDC shall deal exclusively with the Respondent in connection with the Project and shall not negotiate, discuss or enter into any purchase agreement, owner participation agreement or similar agreement with respect to the Project or the Project property as referenced above with any other party. The Parties may extend the Negotiation Period Expiration Date by mutual written amendment to this Agreement. Upon the execution of the Definitive Agreements by the Parties, this Agreement shall be of no further force or effect, except for those obligations set forth herein that expressly survive the execution of the Definitive Agreements.

4. Either Party may terminate this Agreement upon thirty (30) days written notice of default regarding the terms and conditions of this Agreement or for lack of substantial progress in the negotiations of the Definitive Agreements. If the defaulting Party cures the default or lack of substantial progress within the thirty (30) day period described in the notice, then the notice shall be deemed withdrawn and this Agreement will remain in effect. Any notices, demands or requests required or permitted to be given hereunder must be in writing and shall be deemed to be given (i) when hand delivered; or (ii) one (1) business day after delivery to FedEx or similar overnight service for next business day delivery; or (iii) three (3) business days after deposit in the U.S. mail first class postage prepaid; or (iv) when sent by facsimile or electronic (pdf) transmission during normal business hours (i.e., 8:00 a.m. to 6:00 p.m., Monday through Friday), if such transmission is immediately followed by any of the other methods for giving notice. For communication purposes the contact information for the Parties is as follows:

Ashley Squyres
Meridian Development Corporation
104 E. Fairview #239
Meridian, ID 83642
208-830-7786
Email: __meridiandevelopmentcorp@gmail.com

John McGraw
Director of Development
River Cadis Development, LLC
1038 Trowbridge Road
East Lansing, Michigan 48823
Email: jmcgraw@rivercaddis.com

Bruce Freckleton
City of Meridian
33 E. Broadway Ave
Meridian, ID 83642
Email: bfreckleton@meridiancity.org

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first noted above.

MERIDIAN DEVELOPMENT CORPORATION:

By: Dave Winder, Chairman

Attest: Steve Vlassek, Secretary

CITY OF MERIDIAN:

Robert E. Simison, Mayor

Attest: Chris Johnson, City Clerk

MERIDIAN CADDIS, LLC

By: Kevin T. McGraw, _____

EXHIBIT A

Civic Block Project Development Contingencies

MDC and the City recommend approval of the Respondent's proposal with the contingencies cited below, which will be incorporated into the Definitive Agreements as applicable. It is important to note that the OPA will place all of the risk on the Respondent as to whether the tax increment generated by the Project will be sufficient to cover the reimbursable costs of the Project and corresponding improvements. If the required contingencies are not met, the Project will not move forward, and the City and MDC will not have expended any funds.

- The final Project must address the Guiding Principles and Basis for Selection criteria outlined in the RFP and incorporated herein by this reference. To the extent that the list set forth below contains additional requirements beyond what is specified in the RFP, the more specific requirements shall prevail. Specifically:
 - a. Preferred projects should feature a mixed-use development with active street level uses that will bring visitors to the area, service downtown residents and workers, and contribute to the vitality of Downtown Meridian.
 - b. The Project should “substantially conform with the vision, goals, and objectives of Destination Downtown, the Meridian Revitalization and Union District Plans, and the Comprehensive Plan for the City of Meridian.”
 - c. Economic benefits include...broadening and enhancing the economic base of the downtown, stimulating new growth and other private development and investment, tax revenue generated, increased property values, long term economic opportunities, employment and job creation, and attraction of visitors and residents to support downtown businesses.
 - d. Preferred projects will include outdoor spaces that encourage public gathering.
 - e. Respondent timelines and cost breakdowns should include all visioning, community outreach and engagement, design, Ada County Highway District (“ACHD”) approvals, and construction for East 2nd Street improvements.” Preferred projects are “encouraged to capitalize on” the enhanced streetscapes and pedestrian-friendly downtown corridor on East 2nd Street “and create pedestrian connections to the proposed project.
 - f. Regarding the public alley vacation, the proposed project must include one-way vehicular access from East 2nd Street. Respondent will obtain the approval for the location of the one-way vehicular access from the adjoining landowners (unBound and COMPASS/VRT).

- g. Prior to the execution of the Definitive Agreements, Respondent shall provide City and MDC representatives with an opportunity to meet with Respondent's proposed financing provider to discuss and verify the Respondent's financial ability and financing plan to complete the project in a timely manner and verify the liquidity and net worth of the guarantor entity.
- Respondent should begin stakeholder outreach and engagement as soon as practical. Public notification should include all property owners, residents, and businesses within 500 feet of the Project site. A minimum of three public meetings are expected.
 - Prior to City's execution of the City/MDC Purchase Agreement, City must be satisfied with the Project elements, including but not limited to the mix of uses on the site, number of parking spaces dedicated to the Project and to the public, public gathering spaces, general site plan and renderings showing height and mass of the Project, and the Festival Street. The above information will be included in the OPA as attachments describing the Project and the OPA will state that any substantial change to these items will require the approval of MDC. The OPA will also require that the Respondent consult with the City prior to requesting any substantial changes to the above attachments and that MDC will consider the input from the City in regard to the proposed substantial changes.
 - To ensure that the Respondent actually closes on the Property in accordance with the terms of this Agreement and the MDC/Respondent Purchase Agreement, the City shall not be required to close under the City/MDC Purchase Agreement until the MDC shall have entered into the MDC/Respondent Purchase Agreement in accordance with the terms hereof and the Respondent shall have satisfied or waived all of its contingencies and conditions to closing thereunder.
 - Due to the substantial costs that Respondent will incur in connection with the negotiation of the Definitive Agreements, due diligence investigations of the Project site and the design, planning, financing and obtaining approvals for the Project, including without limitation the planning and approvals required in connection with the relocation of the Hunter Lateral (as discussed below) (collectively, the "Pre-Closing Expenses"), it is agreed by City and MDC that (i) the City/MDC Purchase Agreement, after execution by such parties, shall not be terminable by either the City or MDC for any reason other than the Financing Condition (as defined herein), or a default by Respondent under the MDC/Respondent Purchase Agreement beyond all applicable notice and cure periods set forth therein; and (ii) Respondent shall be named as an express and intended third-party beneficiary of the City/MDC Purchase Agreement, such that if the City fails to close the transaction contemplated by the City/MDC Purchase Agreement, Respondent shall be permitted to either seek the remedy of specific performance to ensure that both the City and MDC perform their respective obligations under the City/MDC Purchase Agreement or Respondent shall be permitted to seek damages against the City equal to Respondent's Pre-Closing Expenses. The MDC/Respondent

Purchase Agreement shall also permit Respondent the remedy of specific performance to ensure that the MDC performs its obligations under the MDC/Respondent Purchase Agreement and to recover its Pre-Closing Expenses from MDC in the event of a default by MDC under either the MDC/Respondent Purchase Agreement or the City/MDC Purchase Agreement.

- The MDC/Respondent Purchase Agreement shall contain the following contingencies benefiting Respondent: (a) all site conditions, including without limitation, soils, geotechnical and environmental conditions shall be acceptable to Respondent; (b) all matters of title and survey shall be acceptable to Respondent; (c) Respondent shall have determined that the Project is economically feasible in Respondent's sole discretion, including without limitation the costs associated with the relocation of the Hunter Lateral and Respondent's ability to recover such costs under the OPA; (d) Respondent shall have received such approvals as are deemed by Respondent as necessary for the development and construction of the Project; (e) Respondent shall have obtained financing commitments and such other incentives as are deemed necessary for the Project by Respondent, all of which shall be on terms and conditions that are acceptable to Respondent; and (f) MDC shall have acquired the City property from the City pursuant to the terms of the City/MDC Purchase Agreement. Other than the Respondent's costs and expenses incurred in connection with the potential relocation of the Hunter Lateral, which shall include without limitation the cost of all investigations, feasibility studies, plans, applications and approvals procured or prepared by Respondent in connection with such relocation (the "Lateral Relocation Expenses"), which shall be reimbursed by the City as provided in this MOA, if the Respondent decides not to proceed with the Project based upon the foregoing contingencies, then the Respondent shall bear all of its costs, expenses and fees related to the Project and MDC shall have no obligation to reimburse Respondent in any manner. The Respondent/MDC Purchase Agreement shall also provide that if Respondent waives all contingencies and thereafter defaults in its obligation to purchase the Property (after all applicable notice and cure periods as may be set forth in the Respondent/MDC Purchase Agreement), then MDC may terminate the Respondent/MDC Purchase Agreement and recover from Respondent all of MDC's actual, out of pocket attorney fees associated with the transactions contemplated hereunder.
- If the Definitive Agreements are entered into in accordance with the terms of this Agreement and the Respondent thereafter incurs Lateral Relocation Expenses but does not ultimately proceed with the Project for any reason other than the Respondent's default under a Definitive Agreement (including without limitation a failure of a contingency under the MDC/Respondent Purchase Agreement or a failure to perform by the City or MDC under the City/MDC Purchase Agreement or the MDC/Respondent Purchase Agreement), then the City shall be responsible for, and hereby agrees to reimburse the Respondent on demand for, all of the Lateral Relocation Expenses incurred by Respondent. Following such reimbursement,

Respondent shall turn over to the City all plans, studies, applications and other work product procured or prepared by Respondent in connection with the Lateral Relocation Expenses. The City's obligation under this paragraph shall be binding on the City and survive the execution of the Definitive Agreements and any subsequent termination of the Definitive Agreements.

- The Purchase Price payable by Respondent for the entire Project property (including both the City property and the MDC property) under the MDC/Respondent Purchase Agreement shall be equal to the current fair market value of the City property, as determined by a licensed, MAI real estate appraiser reasonably acceptable to the City, MDC and Respondent. Specifically, the appraiser shall take into account the current location of the Hunter Lateral on the City property in determining the City property's fair market value. After Closing, it will become necessary to relocate the Hunter Lateral in order to develop and construct the Project. If Respondent proceeds to closing under the MDC/Respondent Purchase Agreement, Respondent will assume responsibility for relocation of the Hunter Lateral from design through construction and acceptance of improvements by Nampa Meridian Irrigation District and ACHD. Actual, audited costs are eligible for TIF reimbursement with the details to set forth in the final OPA. MDC and the City will continue current efforts to coordinate such relocation with relevant entities prior to finalizing the Definitive Agreements.
- The MDC/Respondent Purchase Agreement shall also require, as the sole condition to MDC's obligation to perform thereunder, that Respondent provide to MDC, prior to closing, the following: (a) a financing commitment from an established financial institution in order to demonstrate that Respondent has the financial ability and viable plan to complete the Project in a timely manner; and (b) copies of loan documentation between Respondent and its lender that set forth an affirmative obligation for Respondent to substantially complete the Project within a definitive construction schedule (but in no event shall Respondent be required to share its construction budget, operating proforma or other financial documentation) (collectively, the "Financing Condition")
- The final Project must include funded, adequate parking. Any off-site parking must be at a specified, approved, alternate location before the Subject Property will be transferred for development. The Parties may negotiate additional public parking.
- Respondent shall cover all Project design costs, up to and including without limitation construction documents, for all buildings, site improvements, parking, and required public infrastructure improvements.
- Audited, verified costs of reimbursable public improvements would be eligible for tax increment financing ("TIF") reimbursement, with the details to be set forth in the final OPA.
- Project funding for reimbursable public improvements will be based on a TIF performance-based reimbursement model. Reimbursement will be made upon successful completion of the Project and reimbursable public

improvements and only from an agreed upon portion of the tax increment dollars received by MDC from the subject property.

- Respondent agrees that its proposal will remain valid for sufficient time to allow for entitlement approvals and execution of the Definitive Agreements.
- The OPA shall contain liquidated damages provisions whereby if Respondent fails to construct the Project in accordance with the requirements of the OPA, subject to force majeure and applicable notice and cure periods set forth therein, MDC shall be permitted to recover from Respondent liquidated damages for Respondent's failure to perform. The liquidated damages recoverable by MDC shall be equal to \$25,000/month (\$835.00/day) for each delay day as to key milestone dates for the commencement and completion of the Project (which shall be more particularly set forth in the OPA); provided, however, the cumulative liquidated damages payable by Respondent under the OPA shall in no event exceed the Purchase Price paid by Respondent for the Property. The OPA will provide that these liquidated damages are to be waived by MDC in the event that Respondent has shown to MDC's reasonable satisfaction that it has made good faith progress toward achieving such key milestone dates for the commencement and completion of the Project and/or if any such delays were for reasons beyond the reasonable control of Respondent. In no event shall any type of liquidated damages exceed the fair market value of the MDC property.