

## **LAKE HAZEL SEWER AND WATER PROJECT AGREEMENT**

This LAKE HAZEL SEWER AND WATER PROJECT AGREEMENT (“Agreement”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between Smith Brighton Inc., Inc., an Idaho corporation, whose mailing address is 2929 W. Navigator Drive, Suite 400, Meridian, Idaho 83642 (“Smith Brighton Inc.”), DWT Investments, LLC, an Idaho limited liability company, whose mailing address is 2929 W. Navigator Drive, Suite 400, Meridian, Idaho 83642 (“DWT Investments”), SCS Investments LLC, an Idaho limited liability company, whose mailing address is 3240 W. Bavaria Drive, Eagle, Idaho 83646 (“SCS Investments”) and the City of Meridian, a municipal corporation established under the laws of the State of Idaho, whose mailing address is 33 E. Broadway Avenue, Meridian, Idaho 83642 (“City”). Smith Brighton Inc., DWT Investments, SCS Investments and the City may be referred to herein individually as a “Party” or collectively as the “Parties.”

**WHEREAS**, DWT Investments and SCS Investments own real property located at the southeast corner of E. Lake Hazel Road and S. Meridian Road identified as Ada County Parcel Numbers S1406223152 and S1406223012 (“Property”); and,

**WHEREAS**, DWT Investments, SCS Investments and Smith Brighton Inc. intend to subdivide and develop the Property (“Development Project”); and,

**WHEREAS**, to facilitate the Development Project, Smith Brighton Inc. intends to design and construct certain on- and off-site sanitary sewer lines and water lines (“Infrastructure Project”), as set forth in LDIR-2023-0014–Lake Hazel Sewer and Water Project, which is incorporated herein by reference; and,

**WHEREAS**, the Infrastructure Project routes a portion of the sanitary sewer mainline through the Property instead of the E. Lake Hazel Road right-of-way, which is a deviation from the City’s “To and Through” policy; and,

**WHEREAS**, the aforementioned deviation from City policy may adversely impact the City’s ability to provide future sanitary sewer service to Ada County Parcel Numbers S1131336110 and S1131336155 (“Northern Parcels”), which are located north of E. Lake Hazel Road; and,

**WHEREAS**, in order to mitigate this potential adverse impact, the Infrastructure Project includes a sanitary sewer line from the Property to E. Lake Hazel Road (“Northern Sanitary Sewer Line”), as depicted in Exhibit A; and,

**WHEREAS**, the City is willing to approve LDIR-2023-0014–Lake Hazel Sewer and Water Project, so long as the Northern Sanitary Sewer Line is timely constructed;

**NOW, THEREFORE**, based on the recitals above, which are incorporated herein, and other good and valuable consideration, the Parties agree as follows:

1. **LDIR-2023-0014–Lake Hazel Sewer and Water Project.** The City shall approve LDIR-2023-0014–Lake Hazel Sewer and Water Project, even though it deviates from the City’s “To and Through” policy, provided that (A) LDIR-2023-0014–Lake Hazel Sewer and Water Project complies with all other City requirements and (B) the Northern Sanitary Sewer Line shall be constructed with the first phase of the Development Project, as required by Section 2 of the Agreement.
2. **Timing of Northern Sanitary Sewer Line.** Smith Brighton Inc. shall, at its expense, construct the Northern Sanitary Sewer Line. The Northern Sanitary Sewer Line shall be included in and constructed with the first phase of the Development Project.
3. **Term.** This Agreement shall terminate once the City confirms, in writing, that the Northern Sanitary Sewer Line has been completed to the City’s satisfaction.
4. **Notices.** Whenever any notice, approval, consent, or request is given or made pursuant to this Agreement, it shall be deemed delivered (i) when hand delivered; or (ii) one (1) business day after delivery to FedEx or a 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 electronic transmission (email), if such transmission is promptly followed by any of the other methods for giving notice.
5. **Assignment.** No Party shall be permitted to assign this Agreement without the express, written consent of the other Parties. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the Parties.
6. **No agency.** The Parties expressly acknowledge and agree that Smith Brighton Inc., DWT Investments and SCS Investments, including their respective employees, agents, contractors, officials, and officers, are not agents of the City in any manner or for any purpose.
7. **Non-waiver.** Failure 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 a Party becomes entitled to the benefit thereof, notwithstanding delay in enforcement.
8. **Time is of the essence.** Time is of the essence with regard to the performance of all of the Parties’ obligations under this Agreement.
9. **Exhibits.** All exhibits to this Agreement are incorporated by reference and made a part hereof as if the exhibits were set forth in their entirety in this Agreement.
10. **Entire agreement.** This Agreement contains the entire agreement of the Parties with respect to the Northern Sanitary Sewer Line and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof

or contemporaneous herewith. This Agreement may only be amended via a writing signed by the Parties hereto.

**11. Applicable law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Idaho. Venue shall be Ada County, Idaho.

**12. Incorporation of recitals.** The recitals set forth above are fully incorporated herein.

**13. Multiple counterparts.** This Agreement may be executed by electronic signature and/or in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the Parties have hereunto subscribed their signatures the day and year first herein above written.

**CITY OF MERIDIAN:**

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

Attest: \_\_\_\_\_  
City Clerk

**SMITH BRIGHTON INC., INC.**

By: \_\_\_\_\_  
Robert L. Phillips, COO

**DWT INVESTMENTS LLC**  
**By Brighton Corporation, its Manager**

By: \_\_\_\_\_  
Robert L. Phillips, President

**SCS INVESTMENTS LLC**  
an Idaho limited liability company

By: \_\_\_\_\_  
Michael A. Hall, President

**EXHIBIT A**

**APPROXIMATE LOCATION  
OF  
NORTHERN SANITARY SEWER LINE**

