

**FIRST AMENDMENT TO MEMORANDUM OF AGREEMENT**  
**CIVIC BLOCK DEVELOPMENT PROPOSAL**

This FIRST AMENDMENT (“Amendment”) to the MEMORANDUM OF AGREEMENT between the parties dated April 12<sup>th</sup>, 2022 (“MOA”) is made this \_\_\_ day of \_\_\_\_\_, 2023 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**, the MOA pertains to the development or redevelopment of the Civic Block property (the “Project”) and expired by its terms on December 31, 2022, but can be amended and extended by mutual agreement of the Parties and without a time extension the Project will not move forward;

**WHEREAS**, Respondent desires to move forward but has requested additional time to evaluate market conditions and the viability of the Project;

**WHEREAS**, MDC and the City also desire the Project to move forward and are willing to grant a time extension for the MOA subject to certain conditions;

**WHEREAS**, the Parties desire to amend the MOA as provided herein with all other terms and conditions of the MOA remaining the same.

**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. Intent**

The Parties hereby enter into this Amendment to extend the MOA between MDC, Respondent and the City to continue to work toward a feasible development Project for the site in accordance with the terms of the MOA and this Amendment. This Amendment is also intended to enable the City to move forward with the Hunter Lateral relocation with funding from Respondent, subject to the execution of a funding agreement (“Funding Agreement”) whereby the City will reimburse Respondent for all relocation costs that are made part of the Funding Agreement and after the Parties have agreed on a final bid package for the construction of the Hunter lateral and the issuance of a Notice to Proceed.

**2. MOA Extension**

The City, MDC and Respondent hereby agree to retroactively extend the term of the MOA from December 31, 2022 to the date that is twelve (12) months from the date of execution of this Amendment, such that the MOA will be deemed to have been in full force and effect from

December 31, 2022 until terminated in accordance with the terms of the MOA, as amended herein. Notwithstanding the foregoing, if, the Parties have failed to agree upon the budget, Funding Agreement, and timeline for the relocation of the Hunter Lateral by November 1, 2023, then any Party may thereafter terminate the MOA and all associated purchase agreements upon seven (7) days written notice to the other Parties.

In consideration of the extension granted herein, the Parties further agree that each shall take all actions as reasonably necessary to: (a) amend the Purchase Agreement between the MDC and Respondent to align the term of the Purchase Agreement with the MOA, as amended herein; and (b) amend the Purchase Agreement between the MDC and the City to align the term of the Purchase Agreement with the MOA (as amended herein) and the MDC/Respondent Purchase Agreement to ensure the property is appropriately transferred through a same-day, consecutive closing.

If the parties have not executed a mutually acceptable OPA and modified and executed the required agreements by the end of the term of this Amendment, then the MOA and this Amendment shall expire and be considered automatically terminated. Upon termination due to lack of agreement on the Hunter Lateral by November 1, 2023 or upon other termination of the MOA and this Amendment the parties will have no further obligation under any of the agreements related to this Project and the subject properties and each will bear all of their own fees and costs related to this Project. If the City determines, in its sole discretion, that it wishes to proceed with the Hunter Lateral project and to utilize Respondent's plans, studies, and other work product concerning the Hunter Lateral relocation after the MOA and this Amendment terminate, the City and Respondent shall reasonably negotiate the reimbursement of Respondent's out-of-pocket costs related to the plans, studies, and other work product. Following such reimbursement, the Respondent shall turn over to the City all plans, studies, applications and other work product procured or prepared by Respondent in connection with the Relocation Expenses (as defined below).

### **3. Hunter Lateral Relocation**

This Amendment is intended to enable the City to move forward with the Hunter Lateral relocation with funding from Respondent, subject to the execution of the Funding Agreement whereby the City will reimburse Respondent for all relocation costs that are made part of the Funding Agreement and after, the Parties have agreed on a final bid package for the construction of the Hunter lateral and the issuance of a Notice to Proceed.

The process for Respondent's provision of funding for Hunter Lateral relocation and the City's reimbursement obligations will include the following steps, each of which shall be set forth as a term of the Funding Agreement for the Hunter Lateral between the Parties:

- a. City to define the scope of work for the Hunter Lateral relocation and associated timeline;
- b. Respondent to provide construction plans based on the scope of work referenced in Section 3(a) and authorize City to utilize said plans. City will then procure bids for

the Hunter Lateral relocation, confirm costs, and present to Respondent to confer and agree upon a budget for the relocation. The budget will include the following hard and soft costs (no overhead or profit of Respondent) and an associated timeline for expenditures:

- i. Architectural and engineering design costs previously incurred by Respondent related to relocation of the Hunter Lateral;
  - ii. Architectural and engineering design costs to be incurred to finalize the scope of work for the Hunter Lateral relocation through successful relocation; and
  - iii. All direct construction (general contractor) costs for the relocation.
- c. Respondent will provide funding for certain expenses associated with the relocation of the Hunter Lateral as set forth in Section 3(b)(i)-(iii) above (referred to herein as “Relocation Expenses”), subject to the following:
- i. The Parties shall enter into a Funding Agreement to manage the logistics of the relocation of the Hunter Lateral to include, but not limited to, timing of invoicing, timeline for payment, transferring of payment whether through an escrow account or other means, and any and all other usual methods of construction project management. The budget and timeline for the relocation of the Hunter Lateral will set forth the structure and timeline for Respondent’s payment obligation.
  - ii. The Funding Agreement shall include conditions/triggers and a timeline for City’s obligation to reimburse Respondent.
  - iii. All funds expended by Respondent for the relocation of the Hunter Lateral shall be reimbursed to Respondent as attributable Project costs of the overall development Project if the Project moves forward. The Owner Participation Agreement (“OPA”) will be drafted to incorporate this concept.
  - iv. If, for whatever reason, the Parties do not proceed with the overall development Project, Respondent will be reimbursed for the Relocation Expenses that have been expended pursuant to the terms of the Funding Agreement, within 30 days of invoice and regardless of whether the OPA is agreed upon, negotiated or executed.
- d. Respondent will have reasonable access, inspection and/or audit rights for work funded by the Respondent.
- e. Respondent shall work with City to ensure the transfer of ownership for existing plans/work product produced by Respondent and its third-party contractors.

#### **4. Progress Reporting**

Respondent will timely review proposals and bids received by the City for the Hunter Lateral relocation, work collaboratively with the City on the design, budget and timeline for the Hunter Lateral relocation and the Funding Agreement and take other steps as reasonably necessary to achieve the relocation of the Hunter Lateral as set forth above.

In addition, Respondent will meet with officials, appointed by, and representative of, MDC and the City every 4-6 weeks to provide ongoing progress updates on the greater development Project. Such updates may include information regarding one or more of the following subjects, depending on the stage of the Project:

- a. General Diligence Update: Survey and title work, Geotech, environmental, engineering and other site findings
- b. Legal Update: Status of OPA, other legal agreements
- c. Financial Update: Respondent's cost and gap analysis, potential incentive opportunity identification, URD capture potential
- d. Design Update: review of project requirements, site plan design, progression and changes, contingencies and zoning status updates, architect and engineer updates
- e. Construction Update: Contractor updates, potential construction schedule

*The next page is the signature page.*

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

**MERIDIAN DEVELOPMENT CORPORATION:**

\_\_\_\_\_  
Dave Winder, Chairman

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Attest: Steve Vlassek, Secretary

**CITY OF MERIDIAN:**

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Robert E. Simison, Mayor

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Attest: Chris Johnson, City Clerk

**MERIDIAN CADDIS, LLC:**

  
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By: John McGraw, President