

**AGREEMENT TO ACCEPT PAYMENT IN LIEU
OF INSTALLING STREETLIGHT AT 1840 WEST CHINDEN**

This AGREEMENT TO ACCEPT PAYMENT IN LIEU OF INSTALLING STREETLIGHT AT GUTHRIE'S CHICKEN ("Agreement"), made this 18th of Jan., 2024 ("Effective Date") 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 DG Boise Chinden, LLC, whose address is 1000 Johnson Ferry Rd Suite B-250 Marietta, GA 30068 ("Property Owner").

WHEREAS, Property Owner is the owner of Guthrie's Chicken, located at 1840 W. Chinden Blvd, in Meridian, Idaho. In the Chinden and Linder Crossing Subdivision. ("Subject Property").

WHEREAS, Property Owner is currently unable to install the required streetlight along Chinden Boulevard, because the road has not been built out to its ultimate width; and,

WHEREAS, once Chinden Boulevard is widened, City is willing to install the required streetlights following Property Owner's payment to City of the estimated amount necessary to install such streetlight;

WHEREAS, one of the Site-Specific Conditions of Approval of City's approval of C-NEW-2023-0009, is that Property Owner must pay City of Meridian Fourteen Thousand Dollars and Zero Cents (\$14,000.00) in lieu of installing one (1) streetlight on the south side of the Subdivision, along Chinden Boulevard, 1840 W. Chinden Boulevard ("Location").

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 PROPERTY OWNER.

- A. Payment.** By February 17, 2024, Property Owner shall pay to City Fourteen Thousand Dollars and Zero Cents (\$14,000.00), for the installation of one (1) streetlight at Location.
- B. Consent to entry.** Property Owner shall, and hereby does, provide to the City perpetual consent and access to enter the Subdivision for the purpose of inspecting or installing streetlights and related infrastructure. Except in the event of an imminent or realized threat to the public health, safety, or welfare, City shall provide Property Owner at least twenty-four (24) hours prior notice of such entry. Such notice may be verbal, written, or be posted at Location.

II. COMMITMENTS BY CITY.

- A. Installation.** City agrees to accept the amount set forth in this Agreement in lieu of requiring Property Owner to install the one (1) streetlight at Location.

- B. Payment of additional expense for installation.** Upon Property Owner's payment of the amount set forth herein, the requirement in C-NEW-2023-0009 to install the one (1) streetlight at Location shall be considered satisfied. City shall be responsible for any additional cost of installation of streetlights beyond the amount paid by Property Owner under this Agreement.

III. GENERAL PROVISIONS.

- A. Default.** Any failure to perform the terms and conditions of this Agreement, or any portion thereof, shall be a default hereunder.
- B. Notices.** Any notice desired by the Parties or required by this Agreement shall be deemed delivered after deposit in the United States Mail, postage prepaid, addressed as follows:

If to City:
City of Meridian
City Clerk
33 E. Broadway Ave.
Meridian, Idaho 83642

If to Property Owner:
DG Boise Chinden, LLC
1000 Johnson Ferry Rd Suite B-250
Marietta, GA 30068

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.

- C. Time is of the essence.** The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach and default hereunder by the Party so failing to perform.
- D. 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.
- E. Attorney fees.** Should any litigation be commenced between the parties hereto 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.
- F. Final 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.

- G. 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.

H. 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 streetlight installation and maintenance, and any prospective amendments to and/or recodifications thereof, are specifically and without limitation incorporated into this Agreement as if set forth fully herein.

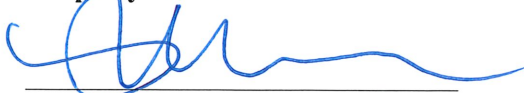
I. Advice of attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorney or the opportunity to seek such advice.

J. Warranty of authority. Each party to this Agreement represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary action of such party and is a valid and binding obligation upon the persons or entity signing this Agreement.

K. 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 shall cause this Agreement to be executed by their duly authorized officers the Effective Date first above written.

Property Owner:



DG Boise Chinden, LLC
Matthew Dalhauser

CITY OF MERIDIAN:

Robert E. Simison
Mayor

Attest: _____
Chris Johnson
City Clerk