

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (this "Agreement") is made this 24 day of March, 2021 by and between the City of Eagle, a municipal corporation organized and existing under the State of Idaho ("Eagle" or "City"), and GWC Capital, LLC, a Utah limited liability company ("GWC"). The City and GWC may be referred to in this Agreement individually as a "Party" or collectively as the "Parties", as warranted under the circumstances.

RECITALS

A. On December 11, 2007 the City approved the Pre-Annexation and Development Agreement between the City and M3 Eagle, LLC recorded on December 27, 2007 as Instrument No. 107170114 and amended on January 24, 2014 as Instrument No. 114006036 (collectively the "Development Agreement") addressing the annexation, zoning and development of the M3-owned property described in the Development Agreement (the "Property").

B. GWC is now the owner of the Property.

C. GWC has requested the establishment of a reimbursement agreement between the Parties to compensate the City for:

a. Staff time spent reviewing pre-submittal development materials including, but not limited to, Fiscal Impact Analysis, applications for preliminary plat, final plat, Planning Unit Master Plans, final development plans, site plans, subdivision plats, grading plans, construction plans and other similar requests ("Pre-Development Submittals");

b. Staff time for the City's review of the Planning Unit Master Plan submittal; and

c. The cost of outside consulting to review and make recommendations on pre-submittal materials, park and pathways improvements planning (including work associated with impact fees), the development of the Conservation Education Program, and development submittal for the Spring Valley Development including, but not limited to legal, engineering, and fiscal impact; and

D. The Parties acknowledge that:

1. Development of the Property, including development of public infrastructure, is expected to progress in phases;

2. This Agreement does not constitute approval of any Development Submittals, application, development agreement or conceptual plans for the development of the Property and all development approvals will be in accordance with the notice and hearing procedures of the Eagle City Code and Idaho State Statutes;

E. The ordinances, rules, regulations, permit requirements, development fees, other infrastructure fees, exactions, other requirements, and/or official policies however denominated, applicable to and governing the development of the Property shall be those that are existing and in force as of the Date of the Development Submittals or as may be established in the Development Agreement.

F. To facilitate and ensure the timely processing of Development Submittals, the Parties agree GWC, on the terms and conditions herein, will deposit and maintain funds with the City for monthly reimbursement of City expenses for the review and consideration of the Development Submittals by appropriate land use planners, legal counsel, engineers and/or other consultants (collectively, "**City Consultants**") as may be retained by the City, provided that such additional fees for services are necessary to support City's review of the Development Submittals where the City would not typically retain an outside consultant (for example, but not limited to, a traffic engineer) (collectively, "**Reimbursable Expenses**"). If the City determines that additional information is necessary to aid in the understanding of the work provided by GWC's consultants provided with the Development Submittals, the City will first request such information be provided by GWC before conducting its own third-party review using an outside City Consultant. A third-party review will not be conducted by the City until GWC has first had an opportunity to present new information to the City. If the Eagle City Council determines that a third-party review by a City Consultant is necessary, then the City will provide written notice to GWC of its intention to retain a City Consultants and City's reason for its necessity. The Parties must agree on a scope of work prior to commencement of third-party review(s).

G. The Eagle City Council has authorized the Mayor to enter into this Agreement on behalf of the City and this Agreement shall become effective on the date that the City has executed this Agreement ("**Effective Date**").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and in consideration of the recitals above, which are hereby incorporated below, the Parties represent, covenant, and agree as follows:

1. **Fees.** GWC, in lieu of paying the fees established in Eagle City Code and/or applicable fee resolution or application form, shall provide a cash deposit of Fifty Thousand Dollars (\$50,000.00) ("**Review Fund**") that will be considered a payment on GWC's account and drawn down based on the Reimbursable Expenses incurred by the City and invoices received by the City for the costs incurred to process the Development Submittals in accordance with Eagle City Code and Idaho State Statutes.

2. **Scope of Review.** Following the Effective Date, and again at least annually, the City, through its Zoning Administrator, and GWC will meet and discuss the scope of review of the Development Submittals by City staff and City Consultants (the "**Scope of Review**"). In advance of the meeting, the City will provide GWC a written estimate for the time and expenses for the Scope of Review, including then-current City Consultant rates. The Scope of Review is understood to be a good faith estimate that may increase or decrease as City's review and processing of the Development Submittals progresses. The fees collected by the City in connection with this Agreement will be used solely for the purpose of reimbursing the City for Reimbursable Expenses subject to the Scope of Review and its amendments, if any.

3. **Processing Applications.** The Parties acknowledge that nothing in this Agreement shall be construed to establish nor grant GWC any right to demand that the Development Submittals are placed ahead of any other rightfully submitted application. The City will establish an official submittal date prior to scheduling a formal review and hearing process.

4. **Minimum Balances.** GWC shall maintain a minimum balance of twenty percent (20%) of the initial deposit in the Review Fund until the City has taken final agency action on the Development Submittals and all implementation of said final action has been completed. Completion of implementation of final agency action shall be determined solely by the City Clerk's office in conjunction with the Zoning Administrator or its designees. The City shall notify GWC when the balance reaches the twenty percent (20%) threshold or less of the initial deposit in the Review Fund on the regular invoice/statement generated by the City Clerk's office.

5. **Invoices and Payment.** The City will provide a monthly statement to GWC detailing Reimbursable Expenses incurred in the prior calendar month (each an "Invoice") along with copies of supporting documentation such as receipts and invoices from City Consultants, which may be redacted to protect privileged or otherwise undisclosed information. If GWC contests any portion of an Invoice, GWC will promptly notify the City Clerk's office pursuant to Eagle City Code § 1-7-4(B)(2)(b), and the Parties will promptly and diligently endeavor to resolve the contested amounts, including, as necessary, by the City replenishing the deposit by the contested amount. If the Parties are unable to come to agreement on the Reimbursable Expenses, either Party may provide the other Party notice and intent to mediate the matter. The Parties shall agree on a mediator selected from the Idaho Supreme Court Mediators Roster. While the matter is in mediation, the City will continue to review the Development Submittals and GWC will continue to pay all uncontested Invoices.

6. **City Right to Stop Work.** If the Review Fund falls below 10% or less of the initial balance, the City Clerk shall have the authority to issue a stop work order to all City departments, including but not limited to City Consultants, but only after City gives GWC notice of City's intent to issue a stop work order and 30 days to cure by replenishing the Review Fund to no less than 20% of the initial balance. The stop work order may be in effect until: (i) all outstanding Invoices are paid in full, excluding any contested Invoices; and (ii) the deposit account is brought back to a minimum balance of no less than 20% of the initial balance. If a stop work order is issued, all scheduled and noticed hearings shall be deemed vacated and shall not be placed on a public meeting agenda. The applicant shall pay all costs for new notices and publication required for new hearings. If after sixty (60) days from the issuance of a stop work order by the City, the Review Fund remains below 10% of the initial balance and GWC has not replenished the Review Fund or been granted waiver or modification pursuant to Eagle City Code § 1-7-4, the Development Submittals shall be deemed abandoned. All remaining funds within the Review Fund shall be returned to GWC less any outstanding Invoices and costs incurred by the City to collect the outstanding invoices.

7. **Past Due Balances.** If there is an outstanding balance after sixty (60) days of a final action by the City, and the City has given GWC notice of such outstanding balance and 30 days to cure, the City Clerk may issue a suspension on the acceptance and processing of all City applications including, but not limited to, building permits, planning and zoning permits, and design review approvals, regardless of location, until the past due amounts are paid in full. The City may use any and all legal remedies to collect outstanding balances.

8. **GWC's Right to Terminate or Suspend.** In the event that GWC elects, in its sole discretion, to cease or suspend pursuing the Development Submittals or upon completion of the City's processing of the Development Submittals, GWC will notify the City in writing. GWC will

be responsible for payment of all Reimbursable Expenses incurred prior to delivery of such notice. The City will provide and GWC will pay a final invoice, with supporting documentation, in accordance with Section 5 of this Agreement. Any balance remaining in the Review Fund will be returned by the City to GWC within sixty (60) days of a final action on the Development Submittals or notice provided by GWC pursuant to this Section 8.

9. Meetings of the Parties. The City's Zoning Administrator, or their designee, and GWC may meet from time to time to discuss the review of the Development Submittals and the manner in which costs might be most effectively managed. The City maintains the sole right to determine the nature and extent of the City's review of the Development Submittals provided such review is consistent with the Eagle City Code, Idaho State Statutes, or any future Development Agreement or other agreements between the Parties. The Zoning Administrator or their designee will be the City's representative and will oversee the City's review of the Pre-Development Submittals and coordinate all communications and carry out any and all tasks as may be required by this Agreement so as to promote the efficient use of time and resources and help control Reimbursable Expenses.

10. Subsequent Applications. The Parties understand and agree that this Reimbursement Agreement pertains to the Development Submittals for the Property identified in the Recitals above. Application fees related to the processing of future land use and administrative applications including, but not limited to, subdivision, conditional use permit, and design review applications will be paid in accordance with the City's adopted planning fee and deposit schedule.

11. Miscellaneous.

a. Notices. All notices, filings, consents, approvals and other communications provided for herein or delivered in connection with this Agreement will be delivered as provided herein.

b. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof. No modification or amendment to this Agreement made or claimed by GWC or the City will have any force or effect unless the same will be endorsed in writing and signed by both Parties.

c. Severability. If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, and this Agreement will otherwise remain in full force and effect.

d. Exhibits; Recitals. Any exhibit attached hereto and the Recitals set forth above are hereby incorporated herein with the same force and effect as if fully set forth in the body of this Agreement.

e. Construction. The language herein will be constructed simply in accord with its fair meaning and not strictly for or against a Party, regardless of whether such Party prepared or caused the preparation of this Agreement. As used in this Agreement references to one gender and the singular or plural number will each be deemed to include the others wherever and whenever the context so dictates.

f. Choice of Law. This Agreement will be construed in accordance with the laws of the State of Idaho.

g. Waiver. No delay in exercising any right or remedy will constitute a waiver by either Party thereof, and no waiver by the City or GWC of the breach of any covenant or condition of this Agreement will be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

h. Successors and Assigns. This Agreement will be binding on the City and GWC, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns.

i. No Partnership; No Third-Party Beneficiaries. Nothing contained in this Agreement will, create any partnership, joint venture or other arrangement between GWC and City. This Agreement will not be construed to create any rights in any person or entity who is not a signatory to this Agreement and no person or entity may claim the status of a third-party beneficiary of this Agreement.

j. No GWC Representations. Nothing contained herein will be deemed to obligate GWC to complete any part or all of the development of the Property in accordance with this Agreement, or any other plan, and this Agreement will not be deemed a representation or warranty by GWC of any kind whatsoever.

k. Time of Essence. Time is of the essence in implementing the terms of this Agreement.

l. Further Acts. Each of the Parties will act in good faith when undertaking their respective obligations and covenants contained herein and will promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

m. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together constitute one and the same instrument.

n. Notices. Any notice which a Party may desire to give to another Party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the Party to whom the notice is directed at the following addresses:

Eagle: City of Eagle
 Attn: City Clerk
 660 E. Civic Lane
 Eagle, ID 83616

with copy to: Borton-Lahey
 Attn: Victor Villegas
 141 E Carton Ave.

Meridian, ID 83642

Owner: GWC Development, LLC
Attn: Brook Cole
869 N. 1500 W.
Orem, UT 84057

with copy to: Clyde Companies Counsel
Brandon Hale
730 N 1500W
Orem, UT 84057


or such other addresses and to such other persons as the parties may hereafter designate. Any such notice will be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

[end of agreement; signatures follow]

IN WITNESS WHEREOF, the Parties hereto, having been duly authorized, have executed this Agreement to be effective as of the Effective Date.

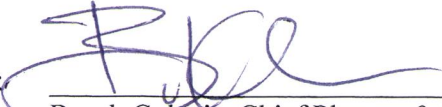
THE CITY:

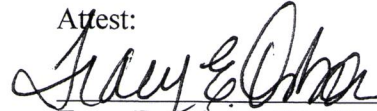
CITY OF EAGLE, IDAHO, a municipal corporation organized and existing under the laws of the State of Idaho

By: 
Jason Pierce, Mayor

GWC:

GWC Capital, LLC, a Utah limited liability company

By: 
Brook Cole, its Chief Planner & Project Manager

Attest:

Tracy E. Osborn, City Clerk

DATED: 3/30/2021

DATED: 4/1/21

