

## DRAFT DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) - dated as of this \_\_\_\_\_, day of \_\_\_\_\_, 2012, is entered into by and between **Red Oxx LLC**, with an address of 310 N. 13<sup>th</sup> Street, Billings, MT 59101 (“Red Oxx”) and the **City of Billings**, a municipal corporation with an address of 210 North 27<sup>th</sup> Street Billings, Montana 59103 (the “City”) (collectively, the “Parties”).

### WITNESSETH:

**WHEREAS**, pursuant to City of Billings Ordinance No. 06-5395 (the “Ordinance”) the City has created the East Billings Urban Renewal District (the “Urban Renewal District”) which contains a tax increment provision;

**WHEREAS**, Red Oxx plans to develop certain property located within the Urban Renewal District as a manufacturing facility on property more particularly described in attached Exhibit “A” {add map} and has provided the Urban Renewal District with a schedule of development for the manufacturing center (the “Project”);

**WHEREAS**, the City requires certain details and specification of the rights, duties, obligations and responsibilities which exist in connection with the construction of certain public improvements, consisting of the parking lot, landscaping, lighting, security system exterior to the building, including all engineering services, architectural services, labor material costs, and other costs associated with the construction and installation thereof, as more particularly set forth in Exhibit “B” attached hereto and made a part hereof (hereafter the “Public Improvements”);

**WHEREAS**, it is the Parties’ intention and desire that a portion of the tax increment revenue generated from the Project (the “Project Tax Increment Revenue”) be used to pay for the costs of the Public Improvements;

**WHEREAS**, pursuant to the Ordinance, the City has determined that the Project and Public Improvements to be constructed therewith are Urban Renewal Projects and that such improvements are eligible for tax increment financing;

**WHEREAS**, the City, and the BIRD, pursuant to the Ordinance has determined that it is appropriate to return a portion of the Project Tax Increment Revenue to Red Oxx.

**NOW THEREFORE**, for good and valuable consideration, the Parties hereto hereby agree, covenant and represent as follows:

### **Section 1. Development of the Project.**

1.A. The City has prepared a report for the City dated \_\_\_\_\_, 2012, (the "City TIF Report") which projects the amount of Project Tax Increment Revenue that will be generated from development of the Project. Red Oxx represents that as expeditiously as possible, Red Oxx shall undertake construction of the Project, which consists of the remodel of a 10,000 sq. ft. manufacturing facility, parking areas, and incidental improvements thereto and which will be substantially completed no later than \_\_\_\_\_, 2012.

1.B. Red Oxx shall obtain the necessary approval from the City for all construction relating to the Project. Red Oxx shall construct all on-site improvements in accordance with City ordinances and any other applicable local, state and/or federal laws or regulations. The proposed development plan shall conform to the current zoning of the Property. All improvements and construction thereon and adjacent to the Project, including, but not limited to off-site development, building construction, landscaping, and lighting shall be performed in accordance with all local, state, and/or federal regulations and laws, and as approved by the City. Red Oxx acknowledges that the Project is subject to applicable utility fees in place at the time a building permit is secured, or applied for, as to the construction and/or the extension of services to the Project or any portion thereof. Those fees shall be due and payable from Red Oxx, at the time of request for service extensions.

**Section 2. Construction and Maintenance of the Public Improvements.** Red Oxx will construct the Public Improvements as a part of the remodeling Project. Said Public Improvements shall be maintained by Red Oxx in a reasonable manner and at no cost to the City.

**Section 3. Assessments and Taxes.** Red Oxx acknowledges and understands that the Project will be assessed for real property taxes and at some time in the future may be assessed with respect to special improvement districts. In this regard, Red Oxx agrees to pay when due all special improvement district assessments and taxes.

**Section 4. Reimbursements.** Consistent with the Parties' desire that a portion of the Project Tax Increment Revenue, specific to this Project, be used to reimburse Red Oxx for the costs of Public Improvements, the City agrees to allocate up to and not to exceed \$45,319 or 45% of the estimated Project Tax Increment Revenue. It is understood that at no time shall Red Oxx be reimbursed for more than the portion of the cost of the total agreed upon qualified public improvements. The cost of said Public Improvements shall be subject to Audit by the City. The reimbursement will be made by the City to Red Oxx with a lump sum payable after the project is completed.

**Section 5. Obligation of the City.** The City intends to refund the portion of Red Oxx's costs for Public Improvements as set forth above to Red Oxx when, and to the extent, that the Project Tax Increment Revenues are received and a Certificate of Occupancy is granted by the City of Billings Building Division.

**Section 6. Entire Agreement.** This Agreement supercedes all prior written or oral understandings or negotiations that the Parties may have undertaken and constitutes the entire agreement between the Parties.

**Section 7. Governing Law.** This Agreement shall be governed by and construed in accordance with the applicable laws of the State of Montana. Venue shall be in Yellowstone County, Montana.

**Section 8. Construction.** If any provision of this Agreement is found to be invalid to any extent, the remainder of this Agreement shall not be affected thereby, and any such provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 9. Successors and Assigns.** The stipulations and agreements of this Agreement shall be binding upon the Parties' successors and assigns.

**Section 10. Notices.** Any notice, demand or request under this Agreement shall be delivered in person or sent via U.S. Certified Mail, postage prepaid, to the Parties at the following addresses:

City of Billings  
510 N Broadway, 4<sup>th</sup> Floor  
Billings, MT 59103  
Attn: TIF Coordinator

Red Oxx LLC  
310 N 13th Street  
Billings, MT 59101  
Attn: Jim Markel

Billings Industrial Revitalization District Inc.  
P.O Box 197  
Billings, Montana 59103

**Section 11. Attorney Fees.** If it becomes necessary for any party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, or to give any notice required herein, then the prevailing party shall be entitled to recover from the other party its' reasonable attorney fees and costs.

**Section 12. Amendments.** Amendments or modifications to this Agreement or any provisions herein shall be made in writing by the party requesting the change and upon written acceptance and execution by all parties shall become a part of this Agreement.

**Section 15. Force Majeure.** For the purposes of this Agreement "Force Majeure" shall mean any act of God, fire, earth movement, flood, explosion, action of the elements, war, invasion insurrection, acts of terrorism, riot, mob violence, sabotage, inability to procure general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions (unless provoked in bad faith violation of any labor laws by the party claiming its obligation or undertaking was prevented or delayed ), condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, similar to the foregoing, not within the

control of such party, provided, however, Force Majeure, shall not include lack of funds or inability of obtain financing. During any time period in which an element of Force Majeure may exist, the Parties hereto are excused as to any performance substantially affected thereby.

**Section 16. Parties to this Agreement.** The only parties to this Agreement are Red Oxx and the City, and except as stated in this section nothing herein should be held to give rise to claims of third parties. This Agreement establishes a right of reimbursement for the cost of Public Improvements paid by Red Oxx and the City shall honor that obligation as set forth herein.

**IN WITNESS WHEREOF**, the Parties have set their hands and seals the day and year first above written.

**CITY OF BILLINGS**

By: \_\_\_\_\_  
Mayor

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

**RED OXX LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Billings Industrial Revitalization District Inc. is not a party to the agreement but approves and accepts the terms and conditions of the Agreement under it's authority granted under the Urban Renewal District Plan.

**BILLINGS INDUSTRIAL REVITALIZATION  
DISTRICT INC.**

By: \_\_\_\_\_

**Its: President**

**Attest:** \_\_\_\_\_

**Its: Secretary**

**STATE OF MONTANA** )  
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**County of Yellowstone** )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_ and \_\_\_\_\_,  
respectively as Mayor and City Clerk or of the City of Billings.

SEAL

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Billings, MT  
My Commission expires: \_\_\_\_\_

**ACKNOWLEDGEMENT NEXT PAGE**

**STATE OF MONTANA** )  
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**County of Yellowstone** )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_, the \_\_\_\_\_,  
of Red Oxx .

SEAL

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Billings, MT  
My Commission expires: \_\_\_\_\_

**STATE OF MONTANA** )  
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:ss  
**County of Yellowstone** )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_,  
2012, by \_\_\_\_\_, the \_\_\_\_\_,  
of Billings Industrial Revitalization Distrct.

SEAL

Sign: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Billings, MT  
My Commission expires: \_\_\_\_\_

DRAFT