

REIMBURSEMENT AGREEMENT
(Billings, Montana City Code Article 26-500)

THIS AGREEMENT entered into this _____ day of _____, 20__ between THE CITY OF BILLINGS, Billings, Montana, and hereinafter referred to as the "CITY", and Cal Kunkel of 6238 Golden Eagle Way, Billings, MT 59106, hereinafter referred to as DEVELOPER.

W I T N E S E T H

WHEREAS, Article 26-500 Billings, Montana City Code provides a procedure for certain developers to be reimbursed for a portion of the costs constructing special benefit facilities under certain circumstances; and

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement or Article 26-500 BMCC; and

WHEREAS, DEVELOPER has agreed to extend a special benefit facility for the purpose of providing water and/or wastewater service through plans and specifications approved by the City on the 3rd day of December, 2012. Said plans and specifications generally provide for the construction of special benefit facilities which are specifically described in Figure A, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining reimbursement for a portion of the special benefit facilities hereafter described; and

WHEREAS, the CITY is desirous of reimbursing the DEVELOPER for a portion of such special benefit facilities.

NOW, THEREFORE, CITY and DEVELOPER, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The special benefit facilities which are eligible for reimbursement to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER'S entitlement to reimbursement, the CITY and DEVELOPER agree that the conditions specified in Section 26-504 BMCC, and the further conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any reimbursement. Said conditions are:

- (a) Special benefit facilities, off-site or perimeter, which front and abut property not owned by the DEVELOPER, must be extended by the DEVELOPER at his expense. Costs of special benefit facilities which are financed through special improvement districts shall not be reimbursed.
- (b) The extension of special benefit facilities must be for the purpose of serving property located within the corporate limits of the City. Costs of extension of special benefit facilities to serve property outside the City limits shall not be reimbursed.
- (c) Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00).
- (d) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate reimbursement fee to be charged to prospective customers under Section 26-503 BMCC within thirty (30) days of final inspection of the special benefit facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.
- (e) DEVELOPER shall enter into a standard reimbursement agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of special benefit facilities.

- (f) Upon completion of the extension of the special benefit facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.
- (g) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing reimbursement payments to DEVELOPER.
- (h) Extension of special benefit facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the City, including but not limited to standards for design and construction of the facilities.

DEVELOPER agrees that it will not be entitled to any reimbursement whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein or in Article 26-500, Billings, Montana City Code may, at the option of the City, result in denial of any and all reimbursement to the DEVELOPER.

3. In addition, it is expressly agreed that any reimbursement payment is conditioned upon the following:

- (a) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in Article 26-500 BMCC. Reimbursement payments are limited to reimbursement fees actually collected for connections with the special benefit facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will reimbursement payments exceed the actual cost to the DEVELOPER of extending the special benefit facilities.
- (b) Reimbursement fees paid to the CITY shall be accumulated and paid to the DEVELOPER annually on each November 1st following acceptance of the special benefit facilities by the CITY beginning on November 1, 2013, and ending on November 1, 2023.
- (c) Reimbursement payments shall not include any interest charges.
- (d) Reimbursement payments to the DEVELOPER shall be limited to reimbursement fees paid to the CITY on or before the 10th anniversary of the date of acceptance by the CITY of the special benefit facilities described in Figure A attached hereto. Any reimbursement fees paid to the CITY after said anniversary date shall be retained by the CITY and used for construction of additional water and/or wastewater system facilities.

Acceptance of the special benefit facilities for purposes of reimbursement as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the City and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY agrees that it will require prospective customers owning property located outside a DEVELOPER'S subdivision and desiring to connect a service line or lines to any special benefit facilities which has been extended at the DEVELOPER'S expense to pay a reimbursement fee to the CITY in compliance with Section 26-503 BMCC.

5. The CITY, by this agreement, is not guaranteeing that reimbursement fees in a sufficient amount to fund full reimbursement to the DEVELOPER will be collected within the 10-year period. The CITY is only agreeing that it will develop a plan under Section 26-503 BMCC that will assure that prospective customers owning property located outside a DEVELOPER'S subdivision and desiring to connect a service line or lines to the special benefit facility described in Figure A which has been extended at the DEVELOPER'S expense, shall pay a fee and said fee shall be distributed as set forth herein. This fee applies only to connections and does not apply to additional extensions of the special benefit facility. The fee to be charged said prospective customers shall be based upon one half of the total final project costs and \$69.81 per lineal foot for sanitary sewer main and \$42.42 per lineal foot for water main.

6. The address for mailing the reimbursement payment to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER

shall be sent to the Public Works Department of the City of Billings at P.O. Box 30958, Billings, MT 59111. The designation of a new address shall be accompanied by a copy of this agreement.

7. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

DATED this 1 day of November, 2013.

By 
DEVELOPER

By _____
CITY OF BILLINGS

By _____
Mayor

ATTEST:

City Clerk