

AFTER RECORDING RETURN TO:

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**Development
and
Maintenance Agreement**

Between

**FOUNDATIONAL MISSIONS, LLC
and
The CITY OF BILLINGS Through
The DEPARTMENT OF PUBLIC WORKS.**

DATED this _____ day of May, 2014.

PARK DEVELOPMENT AND MAINTENANCE AGREEMENT

This Agreement is entered into by and between FOUNDATIONAL MISSIONS, LLC, of 1106 North 30th Street, Billings, Montana, 59107-5200 and the CITY OF BILLINGS THROUGH THE DEPARTMENT OF PUBLIC WORKS, of P.O. Box 1178, Billings, MT 59103-1178.

RECITALS

1. St. Vincent Healthcare Subdivision is owned by SCLHS West End, LLC. Foundational Missions, LLC is the agent of SCLHS West End, LLC.

2. Foundational Missions is responsible for developing and maintaining St. Vincent Healthcare Subdivision.

3. When the Final Plat for St. Vincent Healthcare Subdivision is recorded, additional land appurtenant to Shiloh Road and Monad Road will be included in the Public Right-of-Way. Additionally, Lot 8, Block 1 and Lot 5, Block 4 will be deeded to the City of Billings in order to maintain a utility corridor appurtenant to the public right-of-way.

4. St. Vincent Healthcare Subdivision is zoned as a Planned Unit Development. Pursuant to the Subdivision Improvements Agreement and the Planned Development Agreement for the Subdivision, the additional right-of-way along Monad Road and Shiloh Road as well as the two utility lots described hereinabove, shall be developed and maintained as a park-like green space, to be known as the Ann Ross Green Space, as shown on Exhibit "A" hereto.

5. Foundational Missions and the City enter into this Agreement in order to address the development and maintenance of: (a) the public right-of-way along Shiloh Road and Monad Road within St. Vincent Healthcare Subdivision; (b) the City owned utility lots described herein, (Lot 8, Block 1 and Lot 5, Block 4); and (c) the islands and roundabouts located within the streets in St. Vincent Healthcare Subdivision, which are collectively referred to herein as the "City Property".

AGREEMENTS

Foundational Missions and the City agree:

1. **Development Standards.** The City Property within the Subdivision shall be developed, over time, to at least a minimum standard consistent with the level of landscaping for the public right-of-way located within Shiloh Road. Foundational Missions may, in its sole and exclusive discretion, develop the City Property to a higher standard consistent with Foundational Missions Master Landscaping Plan for St. Vincent Healthcare Subdivision. However, nothing herein shall obligate Foundational Missions to do anything more with respect to the City Property than

to plant and maintain the City Property to a minimum level that is consistent with the level of landscaping within the public right-of-way located on or within Shiloh Road.

2. **The Shiloh and Monad Drains.** Foundational Missions acknowledges that the City must retain access to the drains located within the right-of-way for maintenance purposes. Accordingly, all landscaping of the City Property shall be done in coordination and consultation with the Public Works Department of the City. Foundational Missions shall not plant trees or bushes on the City Property where they would interfere with the City's maintenance obligations. Accordingly, Foundational Missions shall, upon the City's reasonable request, modify the Landscaping Plan to the extent that any landscaping may interfere with the maintenance of the drains in the City Property. Foundational Missions shall have no responsibility to maintain the drains located within the Subdivision along Monad Road and Shiloh Road.
3. **The Master Landscaping Plan.** Foundational Missions intends to develop a Master Landscaping Plan that will present the Subdivision in a favorable and unique way which will provide a number of trees, shrubs, and grasses to satisfy the landscaping requirements. The Master Landscaping Plan is intended to present a uniform plan for the Subdivision, including the City Property described herein. The City consents to Foundational Missions developing and maintaining the City Property in a manner that is consistent and uniform with the Master Landscaping Plan for the Subdivision, except to the extent that a landscaping feature may interfere with the use or maintenance of the drains or in the event that it creates a safety or traffic/clear vision related issue. Accordingly, the City reserves the right to direct changes to the landscaping within the City Property to the extent that the City determines changes are needed for safety reasons or traffic/clear vision related issues or because the landscaping interferes or would interfere with maintenance of the drains.
4. **The Timing of Development.** The City Property shall be developed in phases as the Subdivision develops over time. Foundational Missions shall develop and Landscape the City Property as part of the Ann Ross Green Space generally in accordance with the following schedule. The landscaping described herein shall be completed within twenty four months (24) of the completion of the development identified in the phases described herein below:
 - a. The Monad Road Multi-Use Trail. The Multi-Use Trail adjacent to and North of Monad Road will be constructed by Foundational Missions after the final completion and paving all of Monad Road within the Subdivision.
 - b. Along Monad Road. The dedicated public street right-of-way along Monad Road (approximately 1.81 acres) shall be developed and landscaped by Foundational Missions after lots 1, 8, and 9, Block 3 have been developed.

- c. Along Shiloh Road South of St. Vincent Way. Lot 1, Block 1, and Lot 8, Block 1 and the City of Billings Public Utilities Department Right-of-Way appurtenant thereto shall be developed after the development of Lot 2, 3, or 4, Block 1.
 - d. Along Shiloh Road North of St. Vincent Way. Lots 1 and 4, Block 1, and Lot 5, Block 1, and the City of Billings Public Utilities Department Right-of-Way appurtenant thereto shall be developed after the development of Lot 2, or 3, Block 4.
 - e. The Landscaped Boulevards. The landscaped boulevards in Monad Road, St. Vincent Way, and Saint Mary Way shall be developed after the development of the third lot in the Subdivision.
 - f. The Roundabouts. The Roundabouts located in St. Vincent Way and Saint Mary Way shall be landscaped after the development of the third lot in the Subdivision.
5. **Maintenance.** Foundational Missions shall maintain the Ann Ross Green Space, the landscaped boulevards in Saint Mary Way, St. Vincent Way and Monad Road, and the Roundabouts located at St. Vincent Way and Saint Mary Way, at no cost to the City. Foundational Missions shall maintain these areas to a standard consistent with the level of landscaping located within the public Right-of-Way in Shiloh Road. Foundational Missions shall bill each of the property owners in the Subdivision for their *pro rata* share of the maintenance costs in accordance with the Conditions, Covenants, and Restrictions for the Subdivision.
6. **City Property.** Foundational Missions shall maintain the landscaping on the City Property in the Subdivision, as described herein, in accordance with this Agreement. In the event that the landscaping is not maintained to the standards provided herein or in the event that any of the landscaping becomes a safety issue, then the City shall provide written notice to Foundational Missions identifying the problem and the correction that is being requested. Foundational Missions shall take prompt action to correct any deficiencies and safety issues. If maintenance and safety issues are not resolved within thirty (30) days of written notice, then the City may take corrective action and may bill Foundational Missions for the cost and expenses incurred and Foundational Missions shall make payment to the City within thirty (30) days. The City reserves the right to perform any maintenance on the City Property that the City determines is necessary for public safety. The City shall provide written notice of any safety concerns to Foundational Missions before the City performs any maintenance unless the City determines that an emergency condition exists and that immediate action is required. In such event, the City shall provide written notice to Foundational Missions as soon as possible after the City has taken corrective action.

7. **Notices.** All notices given pursuant to this Agreement must be in writing and shall be given by facsimile, by personal delivery, by United States Mail or United States Express Mail postage or delivery charge prepaid, return receipt requested, or by an established delivery service, such as Federal Express or United Parcel Service (sent to the person and address or facsimile number designated below) but if facsimile notice is used such facsimile notice will only be effective if the written notice and confirmation of transmission is sent to the addressee by an established express delivery service. All notices shall be sent to the following:

Foundation Missions

Foundational Missions, LLC

1106 N. 30th Street
Billings, MT 59107-5200
Phone: (406) 237-3600
Fax: (406) 237-3619

City of Billings

City of Billings
P.O. Box 1178
Billings, MT 59103-1178

With A Copy To:

City Attorney
City of Billings
P. O. Box 1178
Billings, MT 59103-1178
Phone: 406-657-8202
Fax: 406-657-3067

8. **Interpretation.** This Agreement shall not be construed in favor of or against either party. It shall be construed neutrally.
9. **Amendment.** This Agreement shall not be modified or amended, except by a written amendment executed by and on behalf of both the City and Foundational Missions.
10. **Waivers.** Foundational Missions may, in its sole and exclusive discretion, may waive or modify any portion of the Landscaping Plan for any lot within St. Vincent Healthcare Subdivision, provided that the landscaping still complies with the requirements of the Shiloh Corridor Overlay District Zoning codified at 27-1401 et. seq. Billings Montana Municipal Code (2014). Any waiver or modification approved for one lot shall not constitute a waiver or modification for any other lot.
11. **Recording.** The City and Foundational Missions agree that this Agreement shall be recorded against the real property described on Exhibit A hereto.

DATED this _____ day of May, 2014.

FOUNDATIONAL MISSIONS, LLC

CITY OF BILLINGS
DEPARTMENT OF PUBLIC WORKS

By: _____
Its: _____

By: _____
Its: _____

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this ____ day of May, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of FOUNDATIONAL MISSIONS, LLC executing the within instrument, and acknowledged to me that _____ executed the within instrument on behalf of said entity, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

Signature

Print or Type Name
Notary Public for the State of _____
Residing at _____, _____
My Commission Expires: _____

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this ____ day of May, 2014, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of the CITY OF BILLINGS executing the within instrument, and acknowledged to me that _____ executed the within instrument on behalf of said corporation, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

Signature

Print or Type Name
Notary Public for the State of _____
Residing at _____, _____
My Commission Expires: _____

EXHIBIT A

Lot 8, Block 1, St. Vincent Healthcare Subdivision, City of Billings, Yellowstone County, State of Montana, according to the official Plat thereof on file.

Lot 5, Block 4, St. Vincent Healthcare Subdivision, City of Billings, Yellowstone County, State of Montana, according to the official Plat thereof on file.

Lot 1, Block 1, St. Vincent Healthcare Subdivision, City of Billings, Yellowstone County, State of Montana, according to the official Plat thereof on file.

Lot 4, Block 4, St. Vincent Healthcare Subdivision, City of Billings, Yellowstone County, State of Montana, according to the official Plat thereof on file.