

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) - dated as of this _____, day of _____, 2014, is entered into by and between **Billings Elementary District No. 2, Yellowstone County (the “District”)**, a Montana public school district with an address of 415 No. 30th St, Billings MT 59101, the **City of Billings (the “City”)**, a municipal corporation with an address of 210 North 27th Street Billings, Montana 59103, and **South Billings Urban Renewal Association, Inc. (SBURA)**, a 501(c)(6) non-profit organization (collectively, the “Parties”).

WITNESSETH:

WHEREAS, pursuant to City of Billings Ordinance No. 08-5462 (the “Ordinance”) the City has created the South Billings Boulevard Urban Renewal District (the “Urban Renewal District”) which contains a tax increment provision;

WHEREAS, the District includes Orchard Elementary School (as used herein, “Orchard School” shall mean the District). Orchard School plans to develop certain property located within the Urban Renewal District as a school based health care facility in conjunction with Riverstone Health and Billings Clinic, more particularly described in the Orchard School TIF Application Packet (the “Project”) and has provided the Urban Renewal District with a schedule of development.

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. These improvements include interior remodeling such as new walls, HVAC, plumbing, and electrical. This project is unique in that Orchard School is a publically owned building, thereby making interior and building improvements eligible for the investment of TIF funds. The project also includes engineering services, architectural services, labor material costs, and other costs associated with the construction and installation thereof, as more particularly set forth in the Orchard School TIF Application Packet attached hereto and made a part hereof (hereafter 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 SBURA board of Directors has voted to recommend funding the Orchard School TIF application for a certain amount, pursuant to a Memorandum of Understanding approved by the City January 13, 2014 establishing the roles of the parties.

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 SBURA has prepared an application packet titled “Orchard School TIF Application Packet” which details the elements of the project. Orchard School represents that as expeditiously as possible, Orchard School Shall undertake construction of the Project, which consists of a partnership with Riverstone Health and Billings Clinic for the construction and operation of a school based health and psychiatric facility for Orchard School students. These improvements are projected to be substantially complete in approximately 4-6 months.

- 1.B. Orchard School shall obtain the necessary approval from the City for all construction relating to the Project. Orchard School, shall construct all 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, building construction shall be performed in accordance with all local, state, and/or federal regulations and laws, and as approved by the City. Orchard School acknowledges that the Project is subject to applicable permit fees in place at the time a building permit is secured, or applied for, as to the construction of the Project or any portion thereof.

Section 2. Reimbursements. Consistent with the Parties’ desire that South Billings Tax Increment Revenue, specific to this Project, be used to reimburse Orchard School for the costs of Public Improvements, the City agrees to allocate up to and not to exceed \$47,907.00. It is understood that at no time shall Orchard School 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 Orchard School with a lump sum payable after the project is completed.

Section 3. Obligation of the City. The City intends to refund a portion of the costs for Public Improvements as set forth above to Orchard School, using South Billings Boulevard Urban Renewal District tax increment dollars that have been collected after this project has been granted a Certificate of Occupancy by the City of Billings Building Division.

Section 4. 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 5. 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 6. 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 7. Successors and Assigns. The stipulations and agreements of this Agreement shall be binding upon the Parties' successors and assigns.

Section 8. 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
2825 3rd Avenue North, 4th Floor
Billings, MT 59101
Attn: Candi Millar

Orchard School
120 Jackson St
Billings, MT 59101
Attn: Principal Karen Ziegler

Billings Elementary District No. 2, Yellowstone County
415 No. 30th St.
Billings, MT 59101
Attn: Terry N. Bouck, Superintendent

South Billings Urban Renewal Association, Inc.
430 S Billings Blvd
Billings, MT 59101
Attn: Shawn Hanser

Section 9. 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 10. 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 11. 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 12. Parties to this Agreement. The only parties to this Agreement are Orchard School the City, and SBURA, Inc. This Agreement establishes a right of reimbursement for the cost of Public Improvements paid by Orchard School 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

STATE OF MONTANA)
)
)
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____,
2014, 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: _____

SOUTH BILLINGS URBAN RENEWAL ASSOCIATION

By: _____

**Shawn Hanser
President, South Billings Urban Renewal
Association**

STATE OF MONTANA)
:SS
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____,
2014, by _____, the _____,
of South Billings Urban Renewal Association.

SEAL

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