

EXHIBIT "A"

ANNEXATION INCENTIVE DEVELOPMENT AGREEMENT & WAIVER

This Agreement is made and entered into this 29th day of Sept, 2014 by and between The City of Billings, Montana ("City") and Cherry Properties LLC ("Landowner") for the purpose of annexing the following parcel of land ("Property"), described as: S34, T01 N, R26 E, C.O.S. 2196, PARCEL 1, Tax ID D05898 into the City.

WITNESSETH:

WHEREAS, the Landowner is petitioning the City to annex the Property, as authorized by 7-2-4601, MCA; and

WHEREAS, the Property meets the following criteria:

- a. It lies within the 5-Year Limit of Annexation as defined by the City's current Annexation Policy as provided in Resolution No. 11-19058 as amended by Resolution 14-10352, and
- b. It is eligible to be included in the East Billings Urban Renewal District (EBURD) in accordance with State statutes governing Urban Renewal Districts provided in Montana Code Annotated sections 7-15-4201 through 7-15-4324 (2013).

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

1. The Landowner must execute and deliver to the City this Agreement and the Annexation Petition, no later than September 30, 2014. Landowner may make TIF-qualified improvements to the Property not later than five (5) years from the date the Property is annexed into the City (the "Improvements"). The five (5) years represents the period of time that the Landowner will receive preference to TIFD funds for reimbursement of system development fees. The Landowner shall submit a Building Permit application for the proposed Improvements to the City before January 2, 2019. The cost of the improvements, as shown on the Building Permit application form, must equal or exceed twenty-five percent (25%) of the current (as of the date of this Development Agreement) assessed value of the Property, as determined by the Montana Department of Revenue.
2. Landowner is responsible for paying water and sanitary sewer system development fees per BMCC Section 26-107 and the current water and wastewater rate and fee schedule resolution. The System Development Fees will be reimbursed to the Landowner if and to the extent that tax increment funds are available for this purpose. The reimbursement may not exceed the total amount of system development fees that Landowner paid and will terminate when the tax increment district sunsets; regardless of the amount of reimbursement Landowner has received.
3. Each project is unique. Funding availability depends upon the number of years remaining in the district, with or without TIFD Bond extensions beyond the initial 15 (fifteen) year lifetime of the TIFD. TIF assistance with public infrastructure shall be based upon criteria outlined in the Criteria for Review section. The TIFD was

established in 2006. Please note that property acquisition costs are *not* to be included in the calculations; *only* property improvements are to be considered. Property improvements are defined as all project costs excluding property acquisition. Generally TIF assistance may be awarded to the eligible PUBLIC PORTION (See Schedule "#1") of projects meeting the criteria and approval processes as described herein, subject to availability of funds.

- a. As specified by Title 7 Chapter 15 Part 4288 Montana Code Annotated (please see Attachment), TIF may be used to finance certain urban renewal activities. Pursuant to this statute, the BIRD will review applications for assistance to projects eligible under the following guidelines. The BIRD will place special emphasis on those projects that exemplify the EBURD Master Plan and the Exposition Gateway Concept Plan, particularly mixed-use developments.
4. The City shall act on the annexation petition no later than January 26, 2015. This shall allow approximately a 22 month time before the *ad valorem*, real property taxes are due on the real property. All other taxes, assessments, fees and charges that are applicable to the properties shall be due and payable per State laws and City of Billings ordinances, resolution and policies.
5. Sidewalks, curb, gutter, blacktopping of streets, storm sewer, sanitary sewer, and water line upgrades will be installed by the City of Billings and paid for using a Tax Increment Finance District Revenue Bond.
6. Curb, gutter and street improvements, along with storm sewer, sanitary sewer and water line upgrades, will be installed by the City of Billings and paid for using a Tax Increment Finance District Revenue Bond. Such funding may be used only within an expanded TIF District, which will require County property owners to annex into the City of Billings. Properties that choose NOT to request annexation by September 30, 2014 cannot benefit from the TIF District Revenue Bond funding and, should the property owner in subsequent years request annexation, that property owner is responsible to reimburse the City of Billings for the property owner's share in the cost of those curb, gutter, street, storm sewer, sanitary sewer and water line improvements.
7. Landowner hereby waives for 20 years from the date of signing this Agreement all rights to protest the formation of one or more special improvement district(s) (SID) for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require and the inclusion in an expanded East Billings Urban Renewal District (EBURD).

This Waiver shall run with the land and shall be binding upon the undersigned, its successors and assigns. Landowner hereby authorizes the City to record and file this Development Agreement against the property.

8. Legal Provisions
 - a. The Landowner of the Properties involved by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

- b. The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors and assigns of the respective parties.
- c. In the event it becomes necessary for either 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 or the party giving notice shall be entitled to reasonable attorney fees and costs.
- d. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"LANDOWNER"

Cherry Properties LLC

By: Amy L. Berry

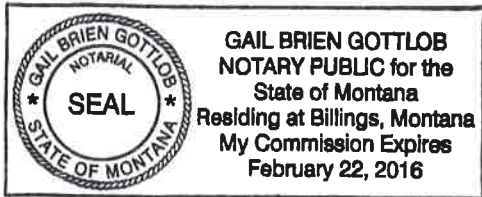
Its: Vice-pres./ Secy.

STATE OF MONTANA)

: ss

County of Yellowstone)

On this 29 day of September, 2014, before me, a Notary Public in and for the State of Montana, personally appeared Amy L. Berry, known to me to be the Vice-pres./Secretary who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Gail Brien Gottlob
Notary Public in and for the State of Montana
Printed Name: Gail Brien Gottlob
Residing at: Billings
My commission expires: 02-22-2016

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 2014.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)

: ss

County of Yellowstone)

On this ____ day of _____, 2014, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

Notary Public in and for the State of Montana

Printed Name: _____

Residing at: _____

My commission expires: _____

Schedule 1

Examples of TIF-Eligible Public Infrastructure Improvements

Demolition and Abatement

Relocation of tenants

Sidewalks, Curbs, Gutters

Public Utilities - Water, Wastewater, Storm Water

Private Utilities - Electrical, Natural Gas, Telecommunications

Intersection Signals

Street Surface Improvements

Crosswalks

Landscaping

Green Space

Improvement of Pedestrian Areas

Historical Restorations

Off Street Parking

Bridges

Pollution Reduction

Security Equipment

Architectural Design