

## **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Eggart Enterprises, LLC, a Montana limited liability company, 2940 US Highway 3, Billings, MT 59106, hereinafter referred to as “Eggart,” RK Development, LLC, a Montana Limited Liability Company, 4040 Parkhill Drive, Billings, MT 59106, hereinafter referred to as “RK”, and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, Billings, Montana, 59101, hereinafter referred to as the “CITY.”

**WHEREAS**, Eggart and RK are the owners of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lots 2-A-1 and 2-A-2, Amended Plat of Lot 2-A, Block 2, Zimmerman Acreage Tracts, 2<sup>nd</sup> Filing, Yellowstone County, MT, hereinafter referred to as “Eggart Tract”

**WHEREAS**, Eggart Enterprises, LLC and RK Development, LLC, owners, have submitted to the City a Petition for Annexation to the City for Eggart Tract; and

**WHEREAS**, Eggart and RK desire to annex Eggart Tract to the City,

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. Sanitary Sewer. Eggart and RK shall connect to the City sanitary sewer system at the manhole located just east of the property in Loma Vista Drive. Eggart and RK will construct a new 8-inch diameter main consisting of approximately 134 lineal feet running west to the west side of 46<sup>th</sup> Street West and then run an 8 inch main running north approximately 235 feet to north end of the Eggart Tract utilizing a Private Contract. The costs associated with

extending this sewer main and the services connected thereto shall be the responsibility of Eggart and RK. The design, size and location of the sanitary sewer and appurtenances shall be in accordance with plans and specifications approved by the appropriate City departments and the State Department of Environmental Quality.

Eggart and RK have made application and received approval for extension/connection of water and sanitary sewer to the Public Works Distribution and Collection system.

2. Water. Eggart and RK shall connect to the City water system with one 1-inch service per lot at the existing water line main in 46<sup>th</sup> street west utilizing a Private Contract. The design, size and location of the water line and appurtenances shall be in accordance with plans and specifications submitted to and approved by the appropriate City Departments and the State Department of Environmental Quality.
3. Storm Drain. There is no municipal storm drain in the area to connect to. No storm drain improvements will be made for the two residential properties.
4. Right of Way. Eggart and RK have already dedicated an additional 10 feet of property to Right of Way during the County Subdivision Process.
5. Curb and Gutter. Eggart and RK will construct approximately 439 feet of curb and gutter on the west side of 46<sup>th</sup> Street West from the north property line down to the south property line fronting the Eggart Tract utilizing a Private Contract. Costs to construct the curb and gutter will be paid by Eggart and RK. The design and location of the curb and gutter shall be in accordance with plans and specifications approved by the appropriate City Departments.
6. Street Widening. Eggart and RK will construct approximately 439 feet of road widening along the west side of 46<sup>th</sup> street west to match the curb line and street widening to the south of Leroy Lane utilizing a Private Contract. No work will be done along Leroy Lane. Extending of the culvert in the canal just north of Leroy Lane may be necessary to install sidewalk and do street widening. The widening will extend the entire length of the Eggart Tract and costs will be paid by Eggart and RK. The design and location of the street widening shall be in accordance with plans and specifications approved by the appropriate City Departments.
7. Sidewalks. Eggart and RK will construct approximately 439 feet of 5-foot wide Boulevard sidewalk with a 5-boulevard width on the west side of 46<sup>th</sup> Street West fronting Eggart Tract utilizing a Private Contract. The design and location of the sidewalk shall be in accordance with plans and specifications approved by the appropriate City Departments.

8. Traffic Signal. No traffic signaling or traffic signage improvements will be required.
9. Other Public Improvements. No specific time schedule is contemplated for construction of other public improvements serving the property. The CITY shall rely on the attached Waiver filed concurrently herewith, to insure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, street construction & paving, curb & gutter, sidewalks, driveways, sanitary sewer and domestic water improvements.  
The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof.
10. Compliance. Nothing herein shall be deemed to exempt the Eggart Tract from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property.
11. Runs with Land. The covenants, agreements, and all statement in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representative, successors and assigns of the respective parties.
12. Attorney's Fees. 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, including those fees and costs of in-house counsel.
13. Amendments and Modifications. Any amendments or modifications of this Agreement 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.





## **WAIVER OF RIGHT TO PROTEST**

**FOR VALUABLE CONSIDERATION**, the undersigned, Owner of the hereinafter described real property, does hereby waive the right to protest the formation of one or more Special Improvement Districts (SID) for the construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area And other incidental improvements which the City of Billings may require.

The Waiver and Agreement shall run with the land and shall be binding upon the undersigned, its successors and assigns, and shall be recorded in the office of County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follow to wit:

Lots 2-A-1 and 2-A-2, Amended Plat of Lot 2-A, Block 2, Zimmerman Acreage Tracts, 2<sup>nd</sup> Filing, Yellowstone County, MT,

WAIVER signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Eggart Enterprises, LLC

By Quentin Eggart, its Sole Member

By: \_\_\_\_\_  
Quentin Eggart  
Sole Member

STATE OF \_\_\_\_\_ )  
:ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
Quentin Eggart, as sole member of Eggart Enterprises, LLC.

\_\_\_\_\_

\_\_\_\_\_

Print Name  
Notary Public for the State of Montana  
Residing in: \_\_\_\_\_  
My Commission expires: \_\_\_/\_\_\_/ 20\_\_

(SEAL)

RK Development, LLC

By Randall Swenson, its Managing Member

By: \_\_\_\_\_  
Randall Swenson  
Managing Member

STATE OF \_\_\_\_\_ )  
:ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
Randall Swenson, as managing member of RK Development, LLC.

\_\_\_\_\_

\_\_\_\_\_

Print Name  
Notary Public for the State of Montana  
Residing in: \_\_\_\_\_  
My Commission expires: \_\_\_/\_\_\_/ 20\_\_

(SEAL)

