

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) - dated as of this _____, day of _____, 2014, is entered into by and between **Ponderosa School** with an address of 4188 King Ave E, 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, Ponderosa School plans to improve certain property located within the Urban Renewal District, more particularly described in the Ponderosa School TIF Application Packet (the “Project”) and has provided the Urban Renewal District with a schedule of improvements.

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 the installation of fencing and security gates. This project is unique in that Ponderosa School is a publicly owned building, thereby making interior and building improvements eligible for the investment of TIF funds. The project includes all labor, material costs, and any other costs associated with the construction and installation thereof, as more particularly set forth in the Ponderosa 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 at its August 1st, 2017 board meeting to recommend funding the Ponderosa 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 “Ponderosa School TIF Application Packet” which details the elements of the project. Ponderosa School represents that as expeditiously as possible, Ponderosa School shall undertake construction of the Project. These improvements are projected to be substantially complete in approximately 1-2 months.
- 1.B. Ponderosa School shall obtain the necessary approval from the City for all construction relating to the Project. Ponderosa School, shall construct all improvements in accordance with City ordinances and any other applicable local, state and/or federal laws or regulations. Ponderosa School acknowledges that the Project is subject to applicable permit fees in place at the time a fencing 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 Ponderosa School for the costs of Public Improvements, the City agrees to allocate up to and not to exceed \$27,296.22. It is understood that at no time shall Ponderosa 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 School District #2 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 Ponderosa School, using South Billings Boulevard Urban Renewal District tax increment dollars that have been collected after this project has been granted a permit by the City of Billings Planning and Community Services Department.

Section 4. Entire Agreement. This Agreement supersedes 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: Wyeth Friday

Ponderosa School
4188 King Ave E
Billings, MT 59101
Attn: Principal Clay Herron

South Billings Urban Renewal Association, Inc.
430 S Billings Blvd
Billings, MT 59101
Attn: Floyd Martin

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 Ponderosa School the City, and SBURA, Inc. This Agreement establishes a right of reimbursement for the cost of Public Improvements paid by Ponderosa 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: _____

PONDEROSA SCHOOL

By: _____
Its: Principal

STATE OF MONTANA)
)
)
County of Yellowstone)

 This instrument was acknowledged before me on the ____ day of _____,
2014, by _____, the _____,
of Ponderosa School

SEAL

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

**SOUTH BILLINGS URBAN RENEWAL
ASSOCIATION.**

By: _____
Its: Vice-President

STATE OF MONTANA)
)
)
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: _____