

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (the “Agreement”) - dated as of this \_\_\_\_, day of \_\_\_\_\_, 2019, is entered into by and between **Orchard Elementary School (Billings Public Schools)** with an address of 120 Jackson St, Billings, MT 59101, the **City of Billings (the “City”)**, a municipal corporation with an address of 210 North 27<sup>th</sup> Street Billings, MT 59103, and **South Billings Urban Renewal Association, Inc. (SBURA)**, a 501(c)(6) non-profit organization with an address of 430 S. Billings Blvd (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**, Orchard Elementary School plans to improve certain property located within the Urban Renewal District, more particularly described in the Orchard Elementary School Playground Project 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. This project is the installation of rubber mulch fall protection in the main playground area of the school recess area. Currently the pea gravel in place is insufficient fall protection. In addition, a request for educational materials related to sidewalk art is also being requested. This project is in conformance with the South Billings Master Plan as the improvement of neighborhood parks and schools is a recommendation of the plan and an allowed use under Montana Urban Renewal Law.

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 Orchard Elementary School Playground Project 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 Public Improvements to be constructed therewith are Urban Renewal Projects as defined in MCA 7-15-4288 and that such improvements are eligible for tax increment financing;

**WHEREAS**, the SBURA board of Directors has voted at its May 7th, 2019 board meeting to recommend funding the Orchard Elementary School Project TIF application for a certain amount, pursuant to the terms of Memorandum of Understanding approved by the City May 13, 2019 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 Elementary School Project TIF Application Packet” which details the elements of the project. Orchard Elementary School represents that as expeditiously as possible, Orchard Elementary School shall undertake performance and construction of the Project. These improvements are projected to be substantially complete prior to, or during, the 2019-2020 school year. .
- 1.B. Orchard Elementary School shall obtain the necessary approval from the City for all construction relating to the Project. Orchard Elementary School shall perform and construct or have performed and construct all improvements in accordance with City ordinances and any other applicable local, state and/or federal laws or regulations. Orchard Elementary School acknowledges that the Project is subject to applicable permit fees in place at the time a demolition, building, or fencing permit is secured, or applied for, as to 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 Elementary School for the costs of Public Improvements and public benefit, the City agrees to allocate up to and not to exceed \$45,675.80. It is understood that at no time shall Orchard Elementary 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 Elementary School with a lump sum payable after the project is completed and any final inspections are performed.

**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 Elementary School, using South Billings Boulevard Urban Renewal District tax increment dollars that have been collected by the City of Billings

**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 3<sup>rd</sup> Avenue North, 4<sup>th</sup> Floor  
Billings, MT 59101  
Attn: Wyeth Friday

Orchard Elementary School  
505 Orchard Ln  
Billings, MT 59101  
Attn: Melissa Soucy

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



**ORCHARD ELEMENTARY SCHOOL**

**By:** \_\_\_\_\_  
**Its: Assistant Principal**

**STATE OF MONTANA**            )  
  )  
  )  
**County of Yellowstone**        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_, the \_\_\_\_\_,  
of Orchard Elementary 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: President**

**STATE OF MONTANA**            )  
  )  
  )  
**County of Yellowstone**        )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2019, 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: \_\_\_\_\_