

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this _____ day of _____, 2020, by and between Buggy Bath Car Wash., P.O. Box 6262, Sheridan, Wyoming 82801 hereinafter referred to as "DEVELOPER," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter referred to as the "CITY."

WHEREAS, DEVELOPER is the owner of certain real property situated in the City of Billings, Montana, more particularly described as follows:

Lot 22-A, Block 2 of Certificate of Survey No. 2727M, situated in the SE 1/4 SE 1/4 of Section 3, T 01S, R 25E, P.M.M., in the City of Billings, Yellowstone County, Montana hereinafter referred to as "Tract".

WHEREAS, DEVELOPER has submitted to the CITY a Petition for Annexation to the CITY for the Tract; and

WHEREAS, DEVELOPER desires to annex the Tract to the CITY; and

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

1. Phasing of Improvements. The DEVELOPER intends to construct a car wash facility on the northern portion of the Tract for review and approval by the CITY. A Special Review and building permit shall be obtained prior to construction of the car wash development. The southern portion of the tract is to remain undeveloped during the immediate development proposal and no subdivision of the property is currently proposed; however, future subdivision of the remainder of the property may be contemplated. Future subdivision of the Tract shall be reviewed in accordance with the applicable subdivision regulations at that time.

2. Sanitary Sewer. The Tract will be served by the existing sanitary sewer main adjacent to Shiloh Road. DEVELOPER will be responsible for connecting to the sanitary sewer main fronting the east side of the proposed building at the time of development and shall be responsible for payment of the City wastewater system development fee at the time a building permit is issued for construction.

DEVELOPER will be required to pay for half of the actual costs of the installation of the sanitary sewer main that was constructed in 2009 along Shiloh Road fronting this property. This can be appropriated to reflect actual frontage of the development phases. This money will be due prior to the issuance of any building permits.

No other off-site utility extensions will be required by DEVELOPER.

3. Water. The proposed car wash facility will be served by the existing water main in Central Avenue with the water meter placed in a meter vault just north of the Central Avenue right of way line. If the water services pass through the adjacent Lot 1-A, a water service easement shall be recorded across Lot 1-A. DEVELOPER will be responsible for connecting to the water main at the time of development and shall be responsible for payment of the City water system development fee at the time a building permit is issued for construction.

No other off-site utility extensions will be required by DEVELOPER.

4. Storm Drain. The DEVELOPER will manage storm drainage in accordance with the City of Billings Stormwater Management Manual (2018) or current at time of building permit application and the General Permit for Storm Water Discharges Associated with Small Municipal Separate Storm Sewer Systems (MS4s), Permit Number MTR040000. Storm drainage from the car wash facility will outfall to the Shiloh Drain and future development of the Tract will outfall to the Shiloh Drain or other permitted outfall at the time of development.

DEVELOPER will be required to comply with City's storm drain rules in effect at the time of development.

5. Right of Way. The Shiloh Road and Central Avenue are designated as Principal Arterials. Shiloh Road is located within a 118-foot wide Montana Department of Transportation right-of-way adjacent to the Tract.

Central Avenue is located within a 70-foot City of Billings right-of-way. Adjacent to the Tract, there is a 40-foot half right-of-way for Central

Avenue. DEVELOPER shall dedicate to the CITY an additional 20 feet of right of way along Central Avenue fronting the Tract with an exempt right-of-way plat. DEVELOPER will not be compensated for the right of way dedication.

6. Access. The Tract has two existing and one future access point as shown on Exhibit A. The Tract has reciprocal access for the Tract and Lot 1-A from an existing Grant and Declaration of Reciprocal Right-of-Way Easements (Document 1862442) that is physically constructed from Shiloh Road and from Central Avenue. The access easement from Shiloh Road is 60 feet in width and the access easement from Central Avenue is 50 feet in width. The DEVELOPER shall be allowed a future access along the 135.24 feet of Tract frontage on Central Avenue. The location, width, type (e.g. full, $\frac{3}{4}$ access, or right-in/right-out) and construction, based on traffic analysis, shall be reviewed and approved by the City of Billings at the time of development of the car wash facility or upon future development or subdivision of the Tract. The DEVELOPER shall provide reciprocal access from the future approach to Lot 1-A.

A Traffic Impact Study shall be completed and approved by the City of Billings prior to lot development. Access recommendations from the approved Traffic Impact Study shall be constructed at the time of lot development. Recommendations may include modification of the existing reciprocal access located on Lot 1-A to Central Avenue to right-in/right-out. The DEVELOPER does not own Lot 1-A and this agreement does not obligate the DEVELOPER to make improvements to existing facilities located within Lot 1-A in which the DEVELOPER does not have authority.

7. Street Widening and Utility Extensions. Shiloh Road is designated as a Principal Arterial and is located within a 118-foot right-of-way adjacent to Tract. The CITY shall rely on the attached Waiver filed concurrently herewith to ensure the installation of future street improvements, which shall include widening, curb, gutter, and sidewalk.

Central Avenue is designated as a Principal Arterial and is located within a 70-foot right-of-way adjacent to Tract. For development of the car wash facility, the CITY shall rely on the attached Waiver filed concurrently herewith to ensure the installation of future street improvements, which shall include widening, curb, gutter, sidewalk, and proportionate share of any storm drain. Upon future development of the Tract or at which time Lot 1-A further develops or re-develops, the DEVELOPER shall complete the installation of street improvements along the 135.24 feet of Central Avenue frontage, which shall include widening, curb, gutter, sidewalk,

and proportionate share of any storm drain. Future widening of Central Avenue may consist of up to a 5-lane roadway. The DEVELOPER will not complete those improvements associated with the 350 feet of Lot 1-A frontage.

No other off-site street widening will be required by DEVELOPER.

8. Other Public Improvements. For any other improvements not specifically listed in this Agreement, the CITY shall rely on the attached Waiver filed concurrently herewith, to ensure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, street construction and paving, curb, gutter, sidewalks, driveways, storm drainage, and street lighting. The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts or Special Improvement Lighting Maintenance Districts, by this reference is expressly incorporated herein and part hereof.
9. Compliance. Nothing herein shall be deemed to exempt the 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.
10. Runs with Land. The covenants, agreements, and all statements in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.
11. 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.
12. 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.

