

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is dated April \_\_\_\_\_, 2018, and is between the City of Billings (the “City”), Downtown Billings Partnership, Inc., a Montana nonprofit corporation (“DBP”), Big Sky Economic Development Authority, a Montana local port authority (“EDA”), Big Sky Economic Development Corporation, a Montana nonprofit corporation (“EDC”), the Billings Chamber of Commerce, a Montana nonprofit corporation, and the Billings Tourism Business Improvement District, a Montana nonprofit corporation (those parties, the “Strategy Partners”).

Landmark Development Services Company, LLC (the “Developer”) paid for and completed its concept development plan (the “Concept Development Plan”) that serves as the framework for the economic development strategy of a mixed-use multi-anchor district for Billings, Montana (that district, the “One Big Sky District”). The Concept Development Plan was the first step in creating a master development plan for the One Big Sky District and the next steps in that process are for the Developer to complete preliminary and final development plans (those plans together, the “Development Plan”). Because the Development Plan has significant potential to promote economic development for the region and State of Montana, the Strategy Partners want to contribute an amount not to exceed \$675,000 toward the overall effort to complete the Development Plan (the “Plan Contribution”). This MOU establishes: (1) the roles and responsibilities of the Strategy Partners in facilitating the Developer’s completion of the Development Plan; and (2) how EDC will administer disbursements from the Plan Contribution under an agreement it will sign with the Developer (the “Development Plan Agreement”).

The parties therefore agree as follows:

1. **Development Plan Agreement.** EDC shall negotiate with the Developer on a Development Plan Agreement that: (1) commits the Developer by working in a collaborative manner with the Strategy Partners to (i) substantially complete the Development Plan under a set scope of work, project schedule and budget (the “Work Plan”), (ii) dedicate the financial resources, internal and external expertise, project development and management skills and other human resources necessary to meet the scope of work and project schedule in the Work Plan and deliver the Development Plan, (iii) provide quarterly status reports to the Strategy Partners on the Developer’s progress on the Development Plan, (iv) contract with those that will provide services and supplies necessary for the Developer to prepare the Development Plan (those parties, the “Vendors”; those contracts, the “Vendor Contracts”), and (v) give preferences to local Vendors using a competitive process; (2) states the specific Work Plan elements the Plan Contribution will fund; (3) recognizes that although the Development Plan Agreement will permit the Strategy Partners to use the Development Plan, that they are not acquiring any supplies or services by making the Plan Contribution; and (4) has other customary terms. EDC shall provide the Strategy Partners with regular updates on the status of those negotiations. Prior to signing the Development Plan Agreement, EDC shall present a draft to the Strategy Partners for review, comment and approval.

2. **Strategy Partners Contribution.** If the Developer and EDC sign the Development Agreement, EDC will provide copies to the Strategy Partners and notify each to contribute its respective portion of the \$675,000 Plan Contribution to EDC as reflected on Exhibit A (that portion, the “Partner Contribution”; the percentage the Partner Contribution bears to the Plan Contribution, the “Percentage Contribution”). Each Strategy Partner shall make its Partner Contribution to EDA within 10 (ten) days of receiving that notice, except for: (1) EDC; and (2) DBP, which will pay its Partner Contribution as provided in the section 5 of this MOU. As EDA receives the Partner Contributions, it shall contribute them to EDC, which shall segregate those funds in a separate account with its Partner Contribution. The

EDC Partner Contribution will comprise contributions from local private sector business community partners. EDC will document those contributions with sponsorship agreements and administer them in the same manner it administers the other Partner Contributions.

3. **Fiscal Administrator.** EDC will act as the fiscal administrator of the Plan Contribution and ensure disbursements are accurate and applied to the appropriate Work Plan element. EDC will not be a party to the Vendor Contracts, but the Plan Development Agreement will have a mechanism for EDC to disburse the Plan Contribution directly to the Vendors on the Developer's behalf to foster transparency (each, a "Vendor Payment"). As the fiscal administrator, EDC will review invoices and perform other accounting and audit functions consistent with that role. As EDC makes Vendor Payments, it shall: (1) allocate them among the Partner Contributions on a Percentage Contribution basis; and (2) provide the Strategy Partners with recurring reports summarizing the Vendor Payments, the applicable Work Plan elements and the progress made by the Developer on the Development Plan. EDC may subcontract some or all of its fiscal administrator obligations to an accountant and if it does, EDC may reimburse itself out of the Plan Contribution, but the reimbursement will not increase any Partner Contribution or exceed \$5,000.

4. **Strategy Partner Responsibilities.** The Strategy Partners shall each: (1) make equitable and consistent contributions of time, staff expertise and community outreach in facilitating the Developer's completion of the Development Plan; (2) fulfill their respective roles stated on the Work Plan, if any; and (3) neither act nor fail to act in a manner causing EDC to breach the Development Plan Agreement. With support from the other Strategy Partners, EDC will fill the lead project management role in coordinating the Strategy Partners as they fulfill their respective responsibilities under this MOU.

5. **DBP Line of Credit.** EDA will extend DBP a non-revolving line of credit on these terms to enable DBP to make its Partner Contribution (the "Line of Credit"): (1) the Line of Credit will be in the form of a promissory note (the "Note") secured by a mortgage or trust indenture (the "Lien Instrument") on the real estate described below (the "Collateral"); (2) the Note will have a (i) limit of \$400,000, (ii) 3-year maturity, (iii) 1.5% annual interest rate on outstanding principal balance, (iv) a clause permitting prepayment without penalty, and (v) other customary terms; (3) DBP may make draws under the Note only (i) during first two years of the term, and (ii) for the Partner Contribution; and (4) the Lien Instrument will (i) have a due on sale clause and other customary terms, and (ii) be insured in a first-priority lien position on the Collateral under a lender's policy of title insurance in the principal amount of the Note. The Line of Credit is subject a Phase I Environmental Site Assessment paid for by DBP and approved by EDA. Regarding the Line of Credit costs: (1) the parties will split the closing costs; (2) DBP will pay for the premium on lender's policy of title insurance; and (3) the parties will pay their own legal expenses. By signing this MOU, the City authorizes the DBP to repay the Line of Credit by: (1) selling the Collateral; (2) through tax increment funds generated by the Expanded 27<sup>th</sup> Street Urban Renewal District; or (3) some combination of those methods. Following is the legal description of the Collateral:

Lots 1, 2 and 3, Block 94, Original Town (now City) of Billings, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County.

6. **Termination.** This MOU is a binding agreement that terminates if: (1) EDC and the Developer do not sign the Development Plan Agreement within 60 days from when EDC first presents it to the Strategy Partners for approval; or (2) the Development Plan Agreement terminates. Upon termination of this MOU, EDC shall return to the Strategy Partners on a Percentage Contribution basis any portion of

the Plan Contribution not expended or otherwise committed under the Development Plan Agreement.

**7. Notice.** For a notice, consent or other communication under this MOU to be valid, it must be in writing and delivered to the address below: (1) by hand; (2) by a national transportation company, with all fees prepaid; or (3) by registered or certified mail, return receipt requested and postage prepaid. A party wishing to change that party's address designated below shall do so by providing notice as provided in this section and upon providing valid notification of that change, later notices or other communications to that party must reflect that changed address to be valid.

City of Billings  
Attn: City Administrator  
210 N. 27<sup>th</sup> Street  
Billings, Montana 59101

Downtown Billings Partnership, Inc.  
Attn: Executive Director  
2815 2<sup>nd</sup> Ave. N.  
Billings, Montana 59101

Big Sky Economic Development Authority  
Attn: Executive Director  
222 N. 32<sup>nd</sup> St., #200  
Billings, Montana 59101

Big Sky Economic Development Corporation  
Attn: Executive Director  
222 N. 32<sup>nd</sup> St., #200  
Billings, Montana 59101

Billings Chamber of Commerce  
Attn: President and CEO  
815 S. 27<sup>th</sup> St.  
Billings, Montana 59101

Billings Tourism Business Improvement District  
c/o Billings Chamber of Commerce  
Attn: President and CEO  
815 S. 27<sup>th</sup> St.  
Billings, Montana 59101

**8. Modification; Waiver.** No amendment to this MOU will be effective unless it is in writing and signed by the parties. No waiver of satisfaction of a condition or failure to comply with an obligation under this MOU will be effective unless it is in writing and signed by the party granting the waiver, and that waiver will not constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

**9. Entire Agreement.** This MOU constitutes the entire understanding between the parties regarding the subject matter of this MOU and supersedes all other agreements on that subject matter, whether written or oral, between the parties.

**10. Severability.** The parties intend that: (1) if any provision of this MOU is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded; (2) if an unenforceable provision is modified or disregarded under this section, then the rest of this MOU will remain in effect as written; and (3) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

**11. Governing Law.** Montana law governs all matters arising out of or relating to this MOU.

**12. Counterparts.** If the parties sign this MOU in several counterparts, they will deem each counterpart as an original, but all counterparts together will constitute one instrument. Delivery of an executed counterpart signature page by fax or by scanned image as an attachment to electronic mail is as effective as executing and delivering this MOU in the presence of the other parties.

The parties are signing this MOU as of the date in the introductory clause.

City of Billings

By: William A Cole  
Name: William A. Cole  
Title: Mayor

Downtown Billings Partnership, Inc.

By: J. A. Patten  
Name: ~~James A. Patten~~ JAMES A. PATTEN  
Title: President / Board Chair

Big Sky Economic Development Authority

By: Jennifer A Smith  
Name: Jennifer A Smith  
Title: CHAIR

Big Sky Economic Development Corporation

By: Eric M. Smolenski  
Name: ERIC M. SMOLENSKI  
Title: CHAIR

Billings Chamber of Commerce

By: John Brewer  
Name: John Brewer  
Title: Billings Chamber

Billings Tourism Business Improvement District

By: Alex Tyson  
Name: Alex Tyson  
Title: Executive Director

**Exhibit A**  
**Strategy Partner Contributions**

<b><u>Strategy Partner</u></b>	<b><u>Partner Contribution</u></b>
City of Billings	\$ 100,000
Downtown Billings Partnership, Inc. and/or Expanded 27th Street Urban Renewal District	\$ 400,000
Big Sky Economic Development Authority <i>(from its Opportunity Fund)</i>	\$ 50,000
Big Sky Economic Development Corporation <i>(through private sector partners)</i>	\$ 95,000
Billings Chamber of Commerce	\$ 15,000
Billings Tourism Business Improvement District	<u>\$ 15,000</u>
<b>Total Plan Contribution</b>	<b><u>\$ 675,000</u></b>