

Return to:
Performance Engineering, LLC
608 N. 29th Street
Billings, MT 59101

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this ____ day of _____, 20____, by and between Aviation Properties, LLC, 6309 Jellison Road, Billings, MT 59101 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." DEVELOPER and CITY are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

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

Tract 14A of Certificate of Survey No. 2037 Amended (Document No. _____), Tracts 1A and 1B of Certificate of Survey No. 1889 Amended (Document No. 3574908), of which plats are on file and recorded at the Yellowstone County Clerk and Recorder's Office. Above referenced properties are hereinafter referred to as "Developer Tracts"

WHEREAS, DEVELOPER has submitted to the City a Petition for Annexation to the City for Developer Tracts; and

WHEREAS, DEVELOPER desires to annex Developer Tracts to the City; and

WHEREAS, DEVELOPER is proposing to develop the Developer Tracts in phases over time; and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tracts contingent upon a Development Agreement being executed between CITY and DEVELOPER to identify required off-site infrastructure improvements and guarantees of those improvements.

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

1. Roads and Access. The Developer Tracts will be accessed by way of approaches along Montana State Highway 3. Said approaches must be reviewed and approved by the Montana Department of Transportation (MDT) and City of Billings, who may require a traffic impact study at the time of development. The approach for AJ Way is existing but will be improved to meet City of Billings standards. The approaches must meet current MDT and City codes and regulations.
2. Sanitary Sewer. The Developer Tracts will be served by proposed sanitary sewer improvements that will discharge to the existing sanitary sewer collection system in Stoney Ridge Road. DEVELOPER will be responsible for connecting the discharge line into the existing sewer manhole and extending the sewer main along the Developer Tracts frontage (excluding Tract 14A's frontage along State Highway 3) at the time of development. Should the City of Billings extend sanitary sewer along Tract 14A's State Highway 3 frontage in the future, DEVELOPER and/or individual lot owners waive the right to protest being included in a Special Improvement District (SID) for the proportionate share of said cost. All of the Developer properties can be assessed for installation of sanitary sewer along the frontage of Developer properties. DEVELOPER shall be responsible for payment of the City wastewater system development fee prior to the issuance of any building permits.
3. Water. The Developer Tracts will be served by proposed water lines connecting to the existing 12" distribution line owned by the City of Billings along State Highway 3. Water line sizes will be determined at the time of development and submitted to the City of Billings for approval. DEVELOPER shall be responsible for payment of the City water system development fee prior to the issuance of any building permits.
4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tracts in accordance with the City of Billings Stormwater Management Manual (2018).
5. Right-of-Way. Right-of-Way will be dedicated to the City of Billings per the 2018 Billings Urban Area Long Range Transportation Plan and in accordance with the City of Billings Subdivision Regulations. Said plan calls for a collector road along the western boundary line of Tract 14A of COS 2037 Amended. Right-of-Way outside that listed above will be dedicated at time of future subdivision or development.

6. Street Construction and Widening. DEVELOPER will be required at the time of development to widen the existing paved roadway (AJ Way) along the western side of Tract 14A to meet the City of Billings standard requirements for roadways. A geotechnical report will be submitted to City Engineering to determine if the existing section of AJ Way meets the City's requirements. Similarly, at the time of development of each other tract included in the Developer Tracts, roadway conforming to the City of Billings standard requirements for roadways shall be constructed by the DEVELOPER.

An 8 to 10 foot sidewalk or trail along the north side of State Highway 3 will be constructed in the future. DEVELOPER and/or individual lot owners waive the right to protest being included in a Special Improvement District (SID) for the proportionate share of said cost. All of the Developer properties can be assessed for installation of the sidewalk/trail along the frontage of Developer properties. The development shall be responsible for the maintenance of the sidewalk/trail after construction.

7. Future Intersection Contributions. A traffic impact study will be performed at the time of future subdivision and/or development to determine DEVELOPER contributions to future intersection improvements.
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, participation in a pedestrian underpass crossing State Highway 3, driveways, storm drainage, and street lighting. 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. All of the Developer properties can be included in a Special Improvements District for improvements identified in Development Agreement regardless of location of individual properties in relation to the improvements.

8. Compliance. Nothing herein shall be deemed to exempt the Developer Tracts 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.

9. 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.

10.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.

11.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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

“DEVELOPER”

Aviation Properties, LLC

By: _____

Title: _____

STATE OF MONTANA)

:ss

County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the person who signed the foregoing instrument as the _____ of Aviation Properties, LLC, and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana

Printed name: _____

Residing at: _____

My commission expires: _____

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, Highway 3 pedestrian crossing, 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 follows:

Tract 14A of Certificate of Survey No. 2037 Amended (Document No. _____), Tracts 1A and 1B of Certificate of Survey No. 1889 Amended (Document No. 3574908), and Tracts 2 through 6, inclusive, of Certificate of Survey No. 1889 (Document No. 1129245), of which plats are on file and recorded at the Yellowstone County Clerk and Recorder's Office.

“DEVELOPER”

Aviation Properties, LLC

By: _____
Title: _____

STATE OF MONTANA)
 :SS.
County of Yellowstone)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the person who signed the foregoing instrument as the _____ of Aviation Properties, LLC, and who acknowledged to me that said DEVELOPER executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____