

Return to:  
*Performance Engineering, LLC*  
*608 North 29<sup>th</sup> Street*  
*Billings, MT 59101*

## **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between TKJ Development, LLC, PO Box 1555, Billings, MT 59103 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 2-C of COS 983 Tract 2 Amended; Tracts 2-G-1 and 2-H-1 of Amended Tracts 2G and 2H of Plat Amending Tract 2-F of COS 983; Tract 14 of COS 983 Amending Tracts 2B & 13

Above referenced property is hereinafter referred to as "Developer Tract"

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

**WHEREAS**, DEVELOPER desires to annex Developer Tract to the City; and

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

**WHEREAS**, CITY has approved the Petition for Annexation by Resolution No. \_\_\_\_\_ for the Developer Tract 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 Tract will be accessed by way of internal roads and driveway approaches. There will be three accesses off 48<sup>th</sup> Street West and two accesses off King Avenue West. An internal road will access onto King Avenue West approximately 680 feet east of the intersection with 48<sup>th</sup> Street West. Two internal road approaches will access onto 48<sup>th</sup> Street West approximately 550 and 1,400 feet north of the intersection with King Avenue West. An additional internal road access point to 48<sup>th</sup> Street West will be provided via the existing Georgina Drive. One driveway access approach shall be provided onto King Avenue West approximately 300 feet east of the intersection with 48<sup>th</sup> Street West. One driveway access point shall be provided onto 48<sup>th</sup> Street west approximately 300 feet north of the intersection with King Avenue West. Approaches within 1,000 feet of the 48<sup>th</sup> Street West and King Avenue West intersection will be restricted to a maximum of three-quarter ( $\frac{3}{4}$ ) access turning movements.
2. Sanitary Sewer. The Developer Tract will be served by extending sanitary sewer main along King Avenue West to 48<sup>th</sup> Street West. Developer will be required to provide a cash contribution for half of the cost of installation of a 12-inch sanitary sewer main extension in 48<sup>th</sup> Street West for the extent of the property.

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 Tract will be served by extending 24-inch water main along King Avenue West to 48<sup>th</sup> Street West. The City has agreed (through a compensation agreement) to pay the difference in the upsizing of a 12-inch main to a 24-inch. A future water main extension is planned in 48<sup>th</sup> Street West as part of the larger West End Reservoir project. In-lieu of extending water main in 48<sup>th</sup> Street West, the Developer will be required to construct a public 12-inch water main from King Avenue West through the Developer Tract to the intersection of 48<sup>th</sup> Street West and Georgina Drive to be located in a public easement or public right of way.

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 Tract in accordance with the City of Billings Stormwater Management Manual (2018). The existing stormwater drain ditch along 48<sup>th</sup> Street West shall be maintained in place. Developer Tract will be permitted to outfall stormwater through a drainage outfall to City infrastructure.

5. Right-of-Way. Public Right-of-Way will be dedicated to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan and in accordance with the City of Billings Subdivision Regulations. Developer will be required to dedicate right-of-way at the intersection of King Avenue West and 48<sup>th</sup> Street West for construction of a future roundabout.
6. Street Construction, Widening and Sidewalks. DEVELOPER will be required at the time of development to provide a cash contribution for curb and gutter and street widening of 48<sup>th</sup> Street West to an equivalent residential street width (34' B-B), and given credit for the existing asphalt in place.
7. Multi-use Trail. A 10-foot multi-use trail will be required to be constructed along King Avenue West and 48<sup>th</sup> Street West at the expense of the DEVELOPER at the time of development.

The development shall be responsible for the maintenance of the sidewalk and/or trail after construction.

8. 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. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPER. Traffic study shall be submitted for review and approval by both the City and Montana Department of Transportation.
9. 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, 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.
10. Annexation. The Developer has requested to develop and annex the property in phases. The annexation is subject to the following conditions of approval:

- a. Phase 1 shall be considered annexed effective immediately upon approval of the mutually agreed upon Development Agreement.
  - b. Phase 2 annexation will require a written request from the developer to the Planning Division. The request shall refer to the document number of this filed resolution and expressly state the landowners desire to immediately include the property within city limits to be developed in accordance with the Planned Neighborhood Development. If deemed necessary, the City may bring forward a subsequent Resolution of Annexation for the City Council's review specifically related to Phase 2. Since both phases were included in the original petition, no new annexation petition fees will be collected by the Planning Division. Further, in no circumstance shall development of any kind commence prior to the City accepting the written request and notification to the Department of Revenue (DOR), City of Billings Geographic Information Services (GIS) and the Yellowstone County Clerk and Recorder. If the Phase 2 written request has not been submitted within seven years of the date of this Resolution, the property will automatically be included in the City Limits. The City will initiate this through notification to the DOR.
  - c. Upon the approval of a subdivision associated with this Annexation and Planned Neighborhood Development, the Annexation Resolution may be amended by City Council to reflect any new phasing boundaries to be consistent with the required Subdivision Improvement Agreement and plat.
  - d. If the conditions are not satisfied, or the developer requests changes inconsistent with the approval in the Resolution of Annexation, any new requests for the property legally described within this resolution shall be processed as a new petition of annexation.
11. Compliance. Nothing herein shall be deemed to exempt the Developer 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.
  12. 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.

13. 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.
  
14. 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”

*TKJ Development, 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 *TKJ Development, 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: \_\_\_\_\_

This Agreement is hereby approved and accepted by City of Billings, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

“CITY”

CITY OF BILLINGS, MONTANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
  :SS  
County of Yellowstone     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

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

Approved as to Form:

\_\_\_\_\_  
City Attorney

