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City of Billings
2224 Montana Avenue
Billings, MT 59102

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this ____ day of _____, 20____, by and between *Messinger Company, LLC, 2210 N Plaza Drive, Rapid City SD 57701-3601* 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:

Parcel 11A (amended) of COS 1391; and SHACKELFORD-YELLOWSTONE SUBDIVISION 3RD FILING, BLOCK 3, Lot 2, 3 and 4 in Section 24, Township 01 S, Range 25 E

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 into the City; 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 Harnish Boulevard and Trade Center Avenue, both defined as Local Commercial Streets. Any access to the I-90 South Frontage Road directly to and from the Developer Tract will require approval from MDOT. Approach design to Harnish Boulevard and Trade Center Avenue to and from the Developer Tract shall be reviewed and approved by the City.
2. Sanitary Sewer. The Developer Tract will be served by a proposed sanitary sewer main extended by DEVELOPER from East Lane to the Developer Tract as described in this Agreement and the Compensation Agreement approved by the City on July 12, 2021. The Compensation Agreement provides for City compensation to Developer for oversizing of the sewer main as well as a contribution toward the sewer and water main extensions.

DEVELOPER is responsible for the design and construction of a sanitary sewer main in both Harnish Boulevard and Trade Center Avenue along the lot frontage of the Developer Tract. Construction of the sanitary sewer main in Harnish Boulevard will be required at the time of site development. Construction of the sanitary sewer main in Trade Center Avenue will be required when the adjacent or nearby tract(s) annex into the City requiring the extension of sanitary sewer. Developer Tract will be required to participate in their proportionate share of the design and construction of sanitary sewer main either through a private contract or special improvement district. The size of the sanitary sewer main will be determined by the City.

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 a proposed water main extended by DEVELOPER from Elysian Road to the Developer Tract as described in this agreement and in the Compensation Agreement approved by the City on July 12, 2021. The Compensation Agreement provides for City compensation for oversizing of the water main as well as a contribution toward the sewer and water main extensions.

DEVELOPER is responsible for the design and construction of a water main in Harnish Boulevard and Trade Center Avenue along the lot frontage of the Developer Tract. Construction of the water main in Harnish Boulevard will be required at the time of site development. Construction of the water main in Trade Center Avenue will be required when the adjacent or nearby tract(s) annex into the City requiring the extension of water mains. Developer Tract will be required to participate in their proportionate share of the design and construction of water main either through a private contract or special

improvement district. The sizes of the water mains will be determined by the City.

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). With the Developer's construction of the improvements to Harnish Boulevard and Trade Center Avenue described below, DEVELOPER is required to pay for its proportionate share of storm drain required with construction of the improvements to of each street.
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.
6. Street Construction, Street Widening, and Sidewalks. DEVELOPER will be required to construct a 5-foot-wide boulevard walk with at least a 5-foot-wide boulevard along Harnish Boulevard (a local Commercial street) and Trade Center Avenue (a local Commercial street) along the entire lot frontage of the Developer Tract. DEVELOPER shall dedicate public right-of-way or a public sidewalk easement along Harnish Boulevard.

The owner of the Developer Tract shall be responsible for the maintenance of the sidewalk after construction.

DEVELOPER will be required to construct Trade Center Avenue along the Developer Tract frontage to full commercial width (45-foot back-of-curb to back-of-curb), which may include the construction of curb and gutter, any necessary tapers to match existing street widths, street widening, and necessary storm drain. Developer may be required to construct curb and gutter along Harnish Boulevard frontage.

Construction of the street widening, curb and gutter, and sidewalk will be delayed for at least five (5) years from the date of the issuance of the Certificate of Occupancy by the City for the facility DEVELOPER intends to construct on Developer Tract. After that five-year expiration, the City can order in the improvements.

7. Multi-use Trail. A 10-foot-wide multi-use trail is not required with this development.

8. Future Intersection Contributions and Traffic Mitigation. A traffic impact study (TIS) will be performed at the time of future subdivision and/or site development to determine DEVELOPER contributions to future intersection improvements. A TIS shall be required by the City if the development exceeds 500 trips/day as determined by the City. 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.

Furthermore, any improvements identified within the TIS to mitigate off-site traffic impacts would be responsibility of the DEVELOPER for design and construction.

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 Tract can be included in a Special Improvements District for improvements identified in this Development Agreement regardless of location of individual properties in relation to the improvements.
9. 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.
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 (the Developer Tract) 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.

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

“DEVELOPER”

Messinger Company, LLC

By: _____

Title: _____

STATE OF SOUTH DAKOTA)

:SS

County of _____)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of South Dakota, personally appeared _____, known to me to be the person who signed the foregoing instrument as the _____ of *Messinger Company, 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 SOUTH DAKOTA

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, multi-use trails, 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, and other 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:

Parcel 11A (amended) of COS 1391; and SHACKELFORD-YELLOWSTONE SUBDIVISION 3RD FILING, BLOCK 3, Lot 2, 3 and 4 in Section 24, Township 01 S, Range 25 E, of which plats are on file and recorded at the Yellowstone County Clerk and Recorder's Office.

“DEVELOPER”

Messinger Company, LLC

By: _____
Title: _____

STATE OF SOUTH DAKOTA)

:ss.

County of _____)

On this ____ day of _____, 20____, before me, a Notary Public in and for the State of South Dakota, personally appeared _____, known to me to be the person who signed the foregoing instrument as the _____ of *Messinger Company, 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 South Dakota
Printed name: _____
Residing at: _____
My commission expires: _____