

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

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made this _____ day of _____, 20_____, by and between *Shiloh Farm, LLC, 730 Bluegrass Place, MT 59102*, 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 C, Certificate of Survey No. 1100 Amended, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 1327683 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, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tract contingent upon an Annexation 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 from two proposed right-in, right-out only approaches from Shiloh Road and two future accesses through the property to the south property line. The approaches from Shiloh

Road must be reviewed and approved by the City and the Montana Department of Transportation. If only one approach is approved to access Shiloh Road, the development will be required to construct an emergency access approach from Shiloh Road, (as determined by City Engineering and the City Fire Department), that can be eliminated once access to the south connected to the westerly extension of Zoo Drive is approved and constructed. Only 100 units can be constructed with one access and an emergency access.

2. Sanitary Sewer. The DEVELOPER is required to extend an 8-inch diameter sanitary sewer from the existing manhole located at the intersection of Zoo Drive and Shiloh Road to at least the intersection of the most southerly access from Developer Tract to Shiloh Road. In addition, if not constructed by other developments by the time this development has commenced, DEVELOPER will be required to extend 8-inch sanitary sewer from Summer Lane to Zoo Drive along Shiloh Road. If sanitary sewer cannot be located within the public right-of-way, DEVELOPER shall provide a public utility easement or dedicate additional right-of-way along Shiloh Road. DEVELOPER shall provide a 30-foot wide easement to the City in order to provide water and sanitary sewer to the City property, Certificate of Survey 3733 located on the northeast corner of Developer Tract. DEVELOPER can submit a reimbursement agreement in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.

3. Water. The DEVELOPER is required to extend a 12-inch or 16-inch diameter water main from the existing water main located at the intersection of Zoo Drive and Shiloh Road along the entire Shiloh Road frontage of the Developer Tract. In addition, if not constructed by other developments by the time this development commences, DEVELOPER will be required to extend the 12-inch or 16-inch diameter water main from Summer Lane to Zoo Drive along Shiloh Road. DEVELOPER can submit a reimbursement agreement in accordance with the City's Rules and Regulations Governing Water and Wastewater Service. If a 16-inch diameter water main is required by the City, City staff will forward a Compensation Agreement to City Council for approval of oversizing of the water main at the DEVELOPER's request. If water cannot be located within the public right-of-way, DEVELOPER shall provide a public utility easement or dedicate additional right-of-way along Shiloh Road. DEVELOPER shall provide a 30-foot wide easement to the City in order to provide water and sanitary sewer to the City property, Certificate of Survey 3733 located on the northeast corner of Developer Tract. DEVELOPER can submit a reimbursement agreement in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.

4. Storm Drain. The DEVELOPER will manage storm drainage within the Developer Tract in accordance with the City of Billings Stormwater Management Manual (2018).
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. If the Developer Tract does not develop through subdivision, a Master Site Plan approval will be required; the City may require the Developer to dedicate adequate right-of-way as part of the City's approval of such Master Site Plan.
6. Street Construction, Widening and Sidewalks. Shiloh Road has been previously constructed out by MDT. Unless identified within the Traffic Impact Study, no additional street improvements will be required along Shiloh Road. Any improvements identified within the Traffic Impact Study would be required to be constructed at the DEVELOPER's expense.
7. Construction near BBWA. DEVELOPER shall not disturb and must maintain ditch at the toe of the BBWA Canal. DEVELOPER shall not plant trees or bushes along the BBWA Canal. DEVELOPER shall maintain a safe setback from the BBWA Canal for buildings and roads. The setback be determined at the time of site development. DEVELOPER shall work with the Building Department to ensure properties are not constructed in such a manner to undermine the BBWA Canal.
8. Multi-use Trail. There is an existing 10-foot wide asphalt multi-use trail along Shiloh Road and the frontage of the Developer Tract.

DEVELOPER shall be responsible for the maintenance and replacement of this 10-wide asphalt multi-use trail located along the frontage of the Developer Tract.

Developer shall provide pedestrian accesses to the park and open space adjacent to the BBWA canal every 400 to 600 feet.

9. 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.

10. 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, 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, parks and park 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 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 Annexation Agreement regardless of location of individual properties in relation to the improvements.

11. Compliance with Land Use and Development Ordinances and Regulations. Nothing herein shall be deemed to exempt the Developer Tract from compliance with any current or future City laws, rules, regulations, policies, and fees that are applicable to the development, redevelopment, or use of the subject property. Final plats or other dedications of the Developer Tract will be transmitted to the City for City Council acceptance of dedication of right-of-way and public easements. Dedications, deeds or conveyances will be in the name of the City after the effective date of the annexation and will be forwarded to the City Council for acceptance.

12. Warning and Indemnification Concerning BBWA Canal. DEVELOPER, its successors and assigns, hereby acknowledge that the Developer Tract is located adjacent to and downhill from the BBWA Canal, creating an inherent risk of injury and property damage. DEVELOPER, its successors and assigns, hereby knowingly, voluntarily, and fully waive and release the CITY from any future right, privilege or claim for compensation, specific performance, injunction, or other remedy of any kind, including those unknown and unanticipated, arising from or in any way related to flood, breach, collapse, leakage, subsidence, earth movement, property damage, personal injury, or any other damage or injury of any kind caused by, emanating from, or in any way related to the BBWA Canal or its construction, maintenance, or operation. DEVELOPER and such parties specifically acknowledge that claims waived and released hereby include, but are not limited to, claims arising from or related to the inherent risks

related to the BBWA Canal, as well as claims arising from or related to CITY's approval of plans or permits. DEVELOPER, its successors and assigns, are expressly advised to retain qualified professionals to assess and advise them on dangers posed by the subject canal, soil conditions, or any other hazards associated with Developer Tract. DEVELOPER, its successors and assigns, further acknowledge that Montana statutes and common law may impose duties requiring that they avoid damaging or impairing the operation of the BBWA Canal. If any action of DEVELOPER or any of its successors and assigns (herein referred to as a "Responsible Party") causes damage or impairment to the BBWA Canal which results in a claim against the CITY for compensation, specific performance, injunction, or other remedy, the Responsible Party shall fully defend, indemnify, and hold the CITY harmless from and against any such claim to the extent of the cause apportioned to the Responsible Party.

13. 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.
14. 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.
15. 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”

Shiloh Farm, 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 Shiloh Farm, LLC representative of DEVELOPER, 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

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, parks and park 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:

Tract C, Certificate of Survey No. 1100 Amended, of which plat is on file and recorded at the Yellowstone County Clerk and Recorder’s Office.

“DEVELOPER”

Shiloh Farm, 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 Shiloh Farm, LLC representative of DEVELOPER 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: _____