

Return to:  
City of Billings  
2224 Montana Avenue  
Billings, MT 59101

## ANNEXATION AGREEMENT

**THIS ANNEXATION 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:

Tract of Land situated in the NW 1/4 of Section 24, T.1S., R.25E, P.M.M., Yellowstone County, Montana, more particularly described as follows:

A portion of Tract 11A-1, of Amended Tract 11A of Certificate of Survey 1391, recorded May 23rd, 2022, under Document No. 4017922 more particularly described as:

Beginning at the southeast corner of said Tract 11A-1; S 88°55'56" W for a distance of 304.08 feet; thence along a curve to the left, with a radius of 1916.88 feet, an arc length of 250.13 feet and a delta angle of 07° 28' 55"; thence N 71°20'38" E for a distance of 300.000 feet, to a point on the west Right-Of-Way of Harnish Boulevard; thence along a curve to the right and along said Right-Of-Way, with a radius of 2216.86 feet, and arc length of 342.86 feet, a delta angle of 08° 51' 40" to the Point Of Beginning 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 Harnish Boulevard.
2. Sanitary Sewer. DEVELOPER is responsible for the design and construction of a sanitary sewer main in Harnish Boulevard along the lot frontage of the Developer Tract. Construction of the sanitary sewer in Harnish Boulevard will be required when the adjacent or nearby tract(s) annex into the City requiring the extension of sanitary sewer. DEVELOPER can submit a reimbursement agreement in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.
3. Water. DEVELOPER is responsible for the design and construction of a water main in Harnish Boulevard along the lot frontage of the Developer Tract. Construction of the water main in Harnish Boulevard will be required when the adjacent or nearby tract(s) annex into the City requiring the extension of water mains or at the request of the City for looping purposes. 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. 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) 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, repair, and replacement of the sidewalk after construction.

7. Multi-use Trail. A 10-foot-wide multi-use trail is not required along the frontage of the Developer Tract.

8. Future Intersection Contributions.

A traffic impact study 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, 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.

10. 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.

11. 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.
12. 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.
13. 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 Messinger Company, 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 South  
Dakota

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 of Land situated in the NW 1/4 of Section 24, T.1S., R.25E, P.M.M., Yellowstone County, Montana, more particularly described as follows:

A portion of Tract 11A-1, of Amended Tract 11A of Certificate of Survey 1391, recorded May 23rd, 2022, under Document No. 4017922 more particularly described as:

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“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 Messinger Company, 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 South  
Dakota

Printed name: \_\_\_\_\_

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_