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City Engineer's Office  
2224 Montana Avenue  
Billings, MT 59101

## **AMENDED DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between ALKALI TIMBERS, LLC, 1655 Valley Heights Road, Billings, MT 59105 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:

*Portions of Tracts A and B of COS 3795, Section 19, T01N, R26E, described in detail by Metes and Bounds on Exhibit A.*

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. 22-11024 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 two separate street or driveway approaches from Alkali Creek Road as approved by the City.
2. Sanitary Sewer. The Developer Tract will be served by extending a sanitary sewer main along Alkali Creek Road to the southeast corner of Developer Tract by the City. Sanitary sewer shall be extended internally through the property at Developer expense generally parallel to Alkali Creek Road to the northeast corner of Developer Tract. The size and depth of the sanitary sewer main shall be determined by the City. Developer can submit a compensation agreement for oversizing of sanitary sewer to the City for consideration.

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 a water main along Alkali Creek Road to the southeast corner of Developer Tract by the City. Water shall be extended internally through the property at Developer expense generally parallel to Alkali Creek Road to the northeast corner of Developer Tract. The size of the water main shall be determined by the City. Developer can submit a compensation agreement for oversizing of water to the City for consideration.

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).
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 a 60-foot wide half right-of-way along Alkali Creek Road.
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 Alkali Creek Road along the property frontage to an equivalent residential street width (34-foot back of curb to back of curb), and given credit for the existing asphalt in place.

7. Multi-use Trail. DEVELOPER will be required to construct a 10-foot wide asphalt multi-use trail either along Alkali Creek Road or through the Developer Tract within a public easement for the length of the Developer Tract. With the development of Phase 1, DEVELOPER is required to construct a 10-foot-wide asphalt multi-use trail through Phase 1 and a gravel trail through Phase 2 and 3 once a permit is obtained from the US Army Corps of Engineers (USACE). Any delay in obtaining the permit may delay the construction of the gravel trail. Developer shall actively pursue the USACE permit. Delay of the gravel trail will not prevent the City from accepting the Phase I improvements. With development of Phase 2 and Phase 3, the multi-use trail must be paved.

The development shall be responsible for the maintenance and replacement 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.
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 Development Agreement regardless of location of individual properties in relation to the improvements.
10. Annexation. DEVELOPER will annex the property in three separate phases as shown in Exhibit B.

- a. Phase 1 shall be considered annexed effective immediately upon approval of the mutually agreed upon Development Agreement.
- b. The DEVELOPER or the City may initiate completion of Phase 2 and phase 3 annexations. If a written request from the DEVELOPER is not received by the timeframes identified below, the City will take action to execute completion of the remaining phases. If the DEVELOPER wishes to execute the annexation sooner than the timeframes identified, a written request will be submitted to the Planning Division. The request shall refer to the document number of the annexation resolution on file with the Yellowstone County Clerk and Recorder and expressly state the DEVELOPERS desire to immediately include the property within city limits to be developed in accordance with the Planned Neighborhood Development. 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 providing 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 three years of the date of this Resolution, the property will automatically be included in the City Limits. The City will initiate this process through notification to the DOR.

If the Phase 3 written request has not been submitted within seven years of the date of the Annexation Resolution, the property will automatically be included in the City Limits. The City will initiate this process through notification to the DOR.

- c. If the conditions of annexation 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.

Phase II will be annexed effective January 10, 2025, or earlier upon written request of the DEVELOPER.

Phase III will be annexed effective January 10, 2029, or earlier upon written request of the DEVELOPER.

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”

ALKALI TIMBERS, 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 \_\_\_\_\_ 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:

*Portions of Tracts A and B of COS 3795, Section 19, T01N, R26E, described in detail by Metes and Bounds on Exhibit A.*

“DEVELOPER”

ALKALI TIMBERS, 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 \_\_\_\_\_ 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: \_\_\_\_\_