

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made this ____ day of _____, 2022, by and between Molly & Darrell Spaeny, 4253 King Avenue West, Billings, MT 59106 and Michelle Amen, 4249 King Avenue West, Billings, MT 59106 hereinafter referred to as “DEVELOPERS,” 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.” DEVELOPERS and CITY are sometimes referred to in this Agreement individually as “Party” and collectively as the “Parties.”

WHEREAS, DEVELOPERS are the owners of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lot 1 of Certificate of Survey 1400, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 960326

Lot 6-B of Certificate of Survey 2064 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. 3163883

Lot 2A of Certificate of Survey 3125, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3499049

hereinafter referred to as “Developer Tracts”

WHEREAS, DEVELOPERS have submitted to the City a Petition for Annexation to the City for Developer Tracts; and

WHEREAS, DEVELOPERS desire to annex Developer Tracts to the City; and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tracts contingent upon a Annexation Agreement being

executed between CITY and DEVELOPERS 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 Tracts currently have access for the single family residences from King Avenue West. If re-developed in the future, access would be determined by the City or MDT.
2. Sanitary Sewer. The Developer Tracts will be served by an existing sanitary sewer main located in King Avenue West. Construction of any sanitary sewer services shall be at the DEVELOPER's expense.

DEVELOPERS shall be responsible for payment of the City wastewater system development fee prior to hooking up to the sanitary sewer.

3. Water. The Developer Tracts will be served by an existing water main located in King Avenue West. Construction of any water services shall be at the DEVELOPERS' expense.

DEVELOPERS shall be responsible for payment of the City water system development fee prior to hooking up to water.

4. Storm Drain. If the Developer Tracts are re-developed or changed from the existing condition, as defined by the City of Billings Stormwater Management Manual, in the future, DEVELOPERS 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 at no cost to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan, in accordance with the City of Billings Subdivision Regulations. There is not any right-of-way dedication anticipated with the annexation.
6. Street Construction, Widening and Sidewalks. King Avenue West is an MDT controlled street. DEVELOPERS may be required construct or financially participate in a City or MDT project to install curb and gutter, and a drive approach in the future and will be included in the waiver of right to protest.
7. Multi-use Trail. There is an existing multi-use trail along King Avenue West along the Developer Tracts. There is small missing gap in the multi-use path.

DEVELOPERS shall construct the multi-use path to fill in the gap at the time of sanitary sewer service connection. The trail connection shall be reviewed and approved by the City and MDT.

DEVELOPERS shall be responsible for the maintenance of the multi-use path fronting the Developer Tracts.

8. *Future Intersection Contributions.* A traffic impact study will not be required at this time. A traffic impact study will be required if Developer Tracts are re-developed to determine DEVELOPERS contributions to future intersection improvements if re-development exceeds 500 trips/day. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPERS.
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 Tracts 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.* Nothing herein shall be deemed to exempt the Developer Tracts 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.

“DEVELOPERS”

By: _____
Darrell Spaeny

By: _____
Molly Spaeny

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 _____ and _____, known to me to be the persons who signed the foregoing instrument as the _____ as the DEVELOPERS and who acknowledged to me that said DEVELOPERS 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: _____

“DEVELOPERS”

By: _____
Michelle Amen

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 DEVELOPERS and who acknowledged to me that said DEVELOPERS 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, Owners of the hereinafter described real property, do 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:

Lot 1 of Certificate of Survey 1400, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 960326

Lot 6-B of Certificate of Survey 2064 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. 3163883

Lot 2A of Certificate of Survey 3125, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3499049

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

“DEVELOPERS”

By: _____
Darrell Spaeny

By: _____
Molly Spaeny

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 _____ and _____, known to me to be the persons who signed the foregoing instrument as the _____ as the DEVELOPERS and who acknowledged to me that said DEVELOPERS 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: _____

“DEVELOPERS”

By: _____
Michelle Amen

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 DEVELOPERS and who acknowledged to me that said DEVELOPERS 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: _____

WAIVER-3