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Performance Engineering  
3412 Colton Boulevard, Billings, MT 59102

## ANNEXATION AGREEMENT

**THIS ANNEXATION AGREEMENT** is made this \_\_\_\_\_, by and between 22500 NOL LLC (dba Yellowstone County Club) whose address is 3200 Paul Allen Way, Billings, MT, 59106 hereinafter referred to as "DEVELOPER," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 316 North 26<sup>th</sup> 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:

Agricultural Tract 11-A-2 of Certificate of Survey No. 836 situated in the N ½ of Section 30, Township 01 North, Range 25 East, P.M.M., Yellowstone County, Montana. Said Certificate of Survey 836 being on file in the offices of the Yellowstone County Clerk and Recorder's Office under Document No. 4042155.

Said annexation contains three parcels from said Agricultural Tract 11-A-2, containing a net and gross total acreage of 4.07 acres, plus or minus. Parcels are further described below.

**Parcel 1:**

Beginning at the northeast corner of Lot 17, Block 26 of Yellowstone Club Estates, 6th Filing, said point also being Point of Beginning #1; thence N01° 28' 04"E a distance of 31.53 feet; thence S88° 31' 56"E a distance of 496.10 feet; thence S01° 28' 04"W a distance of 98.86 feet; thence S36° 31' 40"W a distance of 98.15 feet; thence following a non-tangent curve to the left having a radius of 320.48 feet a central angle of 060° 01' 27" a length of 335.74 feet; thence following a non-tangent curve to the left having a radius of 240.00 feet a central angle of 041° 23' 58" a length of 173.41 feet back to the Point of Beginning. Said Parcel 1 contains 1.39 acres gross and net, more or less.

**Parcel 2:**

Beginning at the northeast corner of Lot 5, Block 22 of Yellowstone Club Estates, 6th Filing, said point also being Point of Beginning #2; thence S37° 45' 43"E a distance of 396.65 feet; thence S65° 11' 15"W a distance of 230.83 feet; thence following a non-tangent curve to the left having a radius of 1700.00 feet a central angle of 11° 51' 06" a length of 351.65 feet; thence N53° 19' 21"E a distance of 181.91 feet back to the Point of Beginning. Said Parcel 2 contains 1.70 acres gross and net, more or less.

**Parcel 3:**

Beginning at the northwest corner of Lot 14, Block 22 of Yellowstone Club Estates, 6th Filing, said point also being Point of Beginning #3; thence S50° 15' 13"W a distance of 169.77 feet; thence following a non-tangent curve to the left having a radius of 250.00 feet a central angle of 043° 15' 58" a length of 188.78 feet; thence N06° 58' 12"E a distance of 185.00 feet; thence S66° 26' 21"E a distance of 150.09 feet; thence S51° 58' 07"E a distance of 167.92 feet, back to the Point of Beginning. Said Parcel 3 contains 0.98 acres gross and net, more or less.

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**, 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 by way of the existing constructed public streets within Yellowstone Club Estates subdivision.
2. Sanitary Sewer. The Developer Tract will be served by the existing sewer mains within Yellowstone Club Estates subdivision. There is no DEVELOPER contributions required for the existing sewer mains within the subdivision.

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 the existing constructed water mains within Yellowstone Club Estates subdivision. There is no DEVELOPER contributions required for the existing water mains within the subdivision

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. No right-of-way dedication is required with annexation.

6. Street Improvements. No street improvements are required with annexation. Installation of street lights is not required as part of this annexation but is included in the Waiver.
7. Sidewalk or Multi-use Trail. Sidewalk is not required to be constructed at the time of development but is included in the Waiver.

DEVELOPER shall be responsible for the maintenance and replacement of the sidewalk if constructed in the future.

8. Future Intersection Contributions. A traffic impact study is not required as development is contemplated to generate fewer than 500 trips/day.
9. Public Improvements. Should the City perform improvements listed in the Agreement or not listed in the Agreement benefitting the Developer Tracts, 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 parks 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. 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.
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”

22500 NOL LLC (dba Yellowstone County Club)  
3200 Paul Allen Way  
Billings, MT 59106

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 \_\_\_\_\_ of 22500 NOL LLC (dba Yellowstone County Club), 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 parks 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:

Agricultural Tract 11-A-2 of Certificate of Survey No. 836 situated in the N ½ of Section 30, Township 01 North, Range 25 East, P.M.M., Yellowstone County, Montana. Said Certificate of Survey 836 being on file in the offices of the Yellowstone County Clerk and Recorder's Office under Document No. 4042155.

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(Document No. \_\_\_\_\_), of which plat is on file and recorded at the Yellowstone County Clerk and Recorder's Office.

"DEVELOPER"

22500 NOL LLC (dba Yellowstone County Club)  
3200 Paul Allen Way  
Billings, MT 59106

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 \_\_\_\_\_ 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: \_\_\_\_\_