

REVISED 10-3-14

SPECIAL BENEFIT AGREEMENT

This Special Benefit Agreement (the "Agreement"), dated _____, 2014 (the "Effective Date"), is made and entered into by and between the City of Missoula, Montana, a municipality duly organized and existing under and by virtue of the Constitution and laws of the State of Montana (the "City") and _____, the property owner (the "Owner") of parcel ID _____, as described on Exhibit A to this Agreement (the "Property").

WHEREAS, the City Council of the City (the "Council") is authorized by Montana Code Annotated ("MCA"), Title 7, Chapter 12, Parts 41 and 42, as amended, to create special improvement districts for the purpose of constructing and financing all or a portion of the cost of public improvements located within the boundaries of a special improvement district;

WHEREAS, the Council adopted Resolution Number ____ on October 6, 2014 ("Resolution No. ____") initiating the creation of a special improvement district to be commonly known as the Hillview Way Special Improvement District No. 549 (the "District");

WHEREAS, pursuant to Resolution No. _____, the City proposes to acquire and construct certain local public improvements to specially benefit certain lots, parcels or tracts of real property (the "District Property") located within the City;

WHEREAS, such improvements consist of reconstructing Hillview Way between 39th Street/Higgins Avenue and 55th Street, including curb, gutter, sidewalks, street paving, and related improvements, as more particularly described in Resolution No. ____ (the "Improvements");

WHEREAS, the District is being created for the purpose of financing a portion of the costs of the Improvements and paying costs incidental thereto;

WHEREAS, Resolution No. _____ provides that the costs of the Improvements shall be assessed against the assessable areas of the District Property benefiting from the Improvements, based on the assessable area method of assessment described in Section 7-12-4162 MCA;

WHEREAS, Resolution No. ____ defines "assessable area" (the area of a lot representing the benefit conferred on the lot by the Improvements) based on the number of "dwelling units" capable of being built on those parcels shown on Exhibit B to Resolution No. ____ which have a number listed under "Future Units";

WHEREAS, the Property is one of the parcels shown on Exhibit B to Resolution No. ____ which have a number listed under "Future Units" with and an estimated assessment of \$ _____;

WHEREAS, the Council adopted Resolution Number. ____ on _____, 2014

("Resolution No. _____") which created a loan program to provide certain property owners within the District, such as the Owner, with conditional relief and deferral from a portion of the cost of District assessments; and

WHEREAS, this Agreement is entered into by the City and the Owner pursuant to and subject to the terms of Resolution No. _____

NOW, THEREFORE, in consideration of the following terms, conditions and covenants the City and the Owner agree as follows.

1. **BENEFITED PROPERTY.** The Owner agrees and acknowledges that the Property is benefitted from the Improvements and that the method of assessment prescribed in Resolution No. _____ is equitable and in proportion to and not exceeding the special benefits derived from the Improvements by the Property.

2. **LOAN; REPAYMENT.** Exhibit B of Resolution No. _____ establishes an assessment of \$ _____ for the Property. The City agrees to make loans to the Owner, in amounts equal to the amount of each installment of any District assessment levied on the Property, and to use the proceeds of such loans to pay such installments as they become due and payable, until the earlier of (a) the date the final installment of any such assessment is due, or (b) the repayment in full of all loans, plus accrued interest, made under this Agreement and the payment in full of all District assessments against the Property.

At issuance of a building permit by the City for a new residential structure on the Property other than for a structure that replaces or modifies a current structure (each, a "Repayment Event"), then a loan payment equal to an amount not to exceed \$1,749.66 (for a Single-Family Unit) or \$1,224.76 (for a Multifamily Unit) plus accrued interest, for each such building permit, shall be repaid.

If after the occurrence of a Repayment Event, the required loan payment remains unpaid for a period of more than thirty days after the City has made proper notification, the City may demand payment of the outstanding principal amount of the loans made pursuant to this Agreement, plus accrued interest. Payment shall be due upon prior to issuance of the building permit.

Simple interest will be charged on the unpaid loan balance. The interest rate shall be the average coupon rate on the bonds issued by the City to finance the Improvements. Interest shall accrue on the outstanding principal amount of the loans until such bonds are no longer outstanding. Payments made to the City by the property owner will first be applied to interest, then to outstanding principal balances. Interest does not accrue past 20 years after the issue date of the underlying District bonds.

The loan repayment may be postponed indefinitely as long as this Agreement is in effect, or until such time as a Repayment Event occurs.

The Owner may prepay the District assessment on the Property, and all loan amounts due under this Agreement, plus accrued interest, in whole or in part, at any time, whether or not in connection with a boundary change of the Property, or a subdivision of the Property into additional parcels.

The City shall provide information to the Owner regarding the status of the loan outstanding amount

of any loans made to the Owner under this agreement and any repayments made by the Owner upon receipt of a written request from the Owner.

~~3. **DIVISIONS OF LAND.** For divisions of land subsequent to the Effective Date, dwelling unit assessments shall be allocated on a pro rata basis to the new parcels (so long as the new parcels are developable) consistent with the original allocation of dwelling unit assessments in Exhibit B. This Agreement shall be amended to reflect the new allocation of dwelling units at the time of division. New owners of divided land can enter into new Special Benefit Agreements in lieu of paying the District assessment at the time of division.~~

4. **ASSIGNMENT; RECORDING.** This Agreement may be assigned by the Owner to any party by submitting a signed notice of assignment to the City Clerk stating the name and address of the assignee. The City and the Owner agree that this Agreement shall be recorded in the office of the Missoula County Clerk and Recorder and shall bind all successors, assigns and heirs of the Owner.

5. **VENUE.** This Agreement shall be construed as being made and delivered in the State of Montana with the laws of the State of Montana being applicable to its construction and enforcement. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision herein shall be instituted in the district court of Missoula County, Montana.

6. **NOTICE.** All notices delivered pursuant to this Agreement shall be sent by certified mail return receipt requested to the following individuals and addresses.

To the City:

To the Owner:

7. **INCORPORATION BY REFERENCE.** The City hereby incorporates by reference all federal and state laws and/or City ordinances which govern the subject of this Agreement. This Agreement specifically incorporates all municipal requirements, charges, ordinances, regulations or policies which have been made, or hereafter amended, by the City. The City reserves all utility and regulatory powers under City ordinances and the laws of the State of Montana to impose any additional fees for any other lawful purpose.

8. **TERM.** This Agreement and all rights and responsibilities under this Agreement shall terminate upon the earlier of (a) the prepayment of the District assessment on the Property, and all loan amounts due under this Agreement, plus accrued interest, in whole, or (b) fiftyforty

(540) years from the Effective Date.

9. **SIGNATURE BY COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the City and the Owner have each executed this Agreement as of the Effective Date.

CITY OF MISSOULA, MONTANA

OWNER

By: _____

By: _____

Attest: _____

City Clerk

Approved as to form:

City Attorney

EXHIBIT A
Legal Description of the Property

DRAFT

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