

## AMENDMENT NO. 1 TO DEVELOPMENT PLAN AGREEMENT

This Amendment No. 1 to the Development Plan Agreement (the “**Amendment**”) is dated as of January 25, 2019 (the “**Amendment Date**”), and is between Big Sky Economic Development Corporation, a Montana nonprofit corporation (“**EDC**”), and Landmark Development Services Company, LLC, a Wisconsin limited liability company (the “**Developer**”).

EDC and the Developer are parties to a Development Plan Agreement dated as of July 1, 2018 (the “**Agreement**”). Capitalized terms this Amendment uses but does not define have the meanings the Agreement ascribes to them. The Development Plan is complete and the parties want to continue their efforts to advance the Project by engaging the Developer to perform certain Additional Services that will enable it to complete additional Work, each as the attached **Exhibit 5** describes (those Additional Services, the “**Additional Amendment No. 1 Services**”; that additional Work, the “**Additional Work**”).

The parties therefore agree as follows:

1. **Additional Services.** The Developer shall perform the Additional Amendment No. 1 Services and provide the related Additional Work the Developer determines, in consultation with EDC, is necessary to advance the Project and enabling legislation consistent with the framework set forth in the Development Plan. The Additional Amendment No. 1 Services are Services and the Additional Work is Work, making the Additional Amendment No. 1 Services and the Additional Work subject to the performance, delivery, collaboration and other provisions of the Agreement applicable to Services and Work. The Additional Work is subject to the ownership and license provisions of the Agreement.

2. **Additional Expenses.** EDC shall pay the Developer up to \$400,000.00 (the “**Additional Expenses**”) for the Additional Amendment No. 1 Services and Additional Work the Developer performs or causes to be performed. The Developer is responsible for its DPE and the parties hereby exclude DPE from the Additional Expenses. The Additional Expenses are Expenses, making them: (1) subject to the submission, accounting, payment and other provisions of the Agreement applicable to Expenses; and (2) Strategy Partners’ Capital Costs.

3. **Developer’s Capital Costs.** To perform all or a portion of the Additional Services and provide the related Additional Work, the Developer reasonably expects to incur DPE and other expenses of \$1,238,000.00, which are not a part of the Strategy Partners’ Capital Costs (such DPE and other expenses incurred by the Developer, the “**Developer’s Additional Capital Costs**”). The Developer’s Additional Capital Costs are Developer’s Capital Costs and are subject to reimbursement as such under the conditions indicated in the Agreement. The parties hereby amend the table on **Exhibit 4** of the Agreement by replacing it with the table on Exhibit 5 under the descriptive heading Developer’s Additional Capital Costs and Totals.

4. **Term Extension.** The parties hereby delete Section 5.1 of the Agreement and replace it with the following:

“The term of the Agreement ends April 30, 2019.”

5. **Catalyst Projects.** The Development Plan is complete and identifies these four Catalyst Projects:

- (i) Convention & Events Center, Hotel Conference / Meeting Pavilion, and “E Street” Exterior Plazas & Sky Terrace
- (ii) Public Market / Food Hall and Farmers Market Pavilion
- (iii) Community Wellness Center / Plaza / Public Town Square
- (iv) Community Innovation / Training Center and Digital Media / Academic Center

6. **Amendment to Exhibit 1.** The parties hereby amend **Exhibit 1** of the Agreement by deleting the phrase “of the end of the term of this Contract” in the second sentence under the section with the descriptive heading Developer’s Capital Costs by replacing it with the phrase “after January 25, 2019”.

7. **Amendment to Exhibit 2.** The parties hereby amend **Exhibit 2** of the Agreement to add the form of Application for Payment attached to this Amendment. The parties inadvertently omitted form of Application for Payment from the Agreement.

8. **Savings.** Except as amended by this Amendment, the provisions of the Agreement remain in effect. If a provision of this Amendment conflicts with a provision of the Agreement, the conflicting provision in this Amendment controls.

9. **Counterparts.** The parties may sign this Amendment in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one instrument. Delivery of a signed counterpart signature page by fax or by scanned image as an attachment to e-mail is as effective as doing so in the presence of the other parties to this Agreement.

10. **Survival.** The provisions of this Amendment with these descriptive headings will survive the termination or expiration of the term of the Agreement: Additional Expenses, Catalyst Projects Developer’s Capital Costs, and the part of Exhibit 5 pertaining to Developer’s Capital Costs.

*[signatures located on the following page]*

The parties are signing this Amendment effective as of the Amendment Date.

Big Sky Economic Development Corporation

By: \_\_\_\_\_  
Steve Arveschoug, Executive Director  
Date: \_\_\_\_\_

Landmark Development Services Company, LLC

By: \_\_\_\_\_  
Robert P. Dunn, Managing Member  
Date: \_\_\_\_\_

By signing below, the Strategy Partners: (1) acknowledge they approve the Agreement, as modified by the Amendment, pursuant to Section 1 of the Memorandum of Understanding between them; (2) agree they are obligated to EDC to perform the matters in the Agreement, as amended, (i) that EDC has agreed to cause the Strategy Partners to perform, and (ii) that otherwise require or necessitate any of their participation, cooperation or collaboration; and (3) the Developer may enforce the payment and performance obligations of the Agreement, as amended, against each Strategy Partner in the same manner and to the fullest extent of the law as if each Strategy Partner were a party hereto.

City of Billings

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Downtown Billings Partnership, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Big Sky Economic Development Authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Billings Chamber of Commerce

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Billings Tourism Business Improvement District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT 5

The parties intend for the Additional Amendment No. 1 Services and Additional Work outlined below to be a representation of the general categories of Services and Work that the Developer and its Subconsultants will be working on, and they do not intend for it to comprise a definitive set of deliverables:

Conceptual Design – Master Plan	Develop Presentation Materials Oversee Development and Revisions to Conceptual Designs as Required Public Presentations / Written and Graphic Support Continue Development of Baseline Cost Models – Civic Build Site Analysis and Massing Studies
Conceptual Design – Engineering	Support Baseline Cost Models General Engineering – Provide Details on Engineering Requirements Associated with Civic Build as Required
Preliminary Site Analysis	Due Diligence on Target Sites (e.g., Phase 1/ Surveys / Etc.) Site Investigation Land Acquisition / Valuation Consultants Land Contracts
Governmental Relations	Public and Media Relations Lobbying and Governmental Relations
Development Management	Developer to Provide Overall Development Management, Public Finance and Strategic Advancement of the Project
Legal / Public Finance	Draft / Modify Legislation Presentations and Hearings / Major Effort is Development of Presentation Materials Oversight of Public Communications Draft Legal Documents as Required Develop and Evaluate Structured Finance Alternatives Prepare Outlines of Development Structures as Project Proceeds and Outline of Definitive Documents for Future Phases of the Work
Other Professional Services	To Be Determined
Fiscal & Economic Impact Analysis	Consultant Team Presentations Modifications to Fiscal and Economic Impact Analysis Develop Comparative Analysis as Required

**Developer's Capital Costs:**

The parties are replacing the table on **Exhibit 4** of the original agreement with the following table. The difference between the tables is that the table below adds columns allocating the Developer's Additional Capital Costs state a new total Developer's Capital Costs:

**CATEGORIES OF DEVELOPER'S ADDITIONAL CAPITAL COSTS AND TOTALS**

<b>Category of Cost</b>	<b>Original Estimated Developer's Capital Costs</b>	<b>Additional Estimated Developer's Capital Costs</b>	<b>Total Estimated Developer's Capital Costs</b>
Development planning / management	\$256,700	\$ 190,800	\$ 447,500
Preparation of master project budgets / schedules	\$83,400	96,600	190,000
Capital structuring / financial modeling	\$198,500	196,750	395,250
Market research & analysis	\$162,500	143,500	306,000
Site planning & evaluation	\$51,650	81,900	133,550
Design management and administration	\$175,000	146,500	321,500
Report production / design / narrative	\$182,250	58,950	241,200
Legal / deal structuring & drafting	\$155,000	268,000	423,000
Related capital expenses	\$65,000	55,000	120,000
<b>TOTAL NOT TO EXCEED</b>	<b>\$1,340,000</b>	<b>\$ 1,238,000</b>	<b>\$ 2,578,000</b>

## FORM OF APPLICATION FOR PAYMENT

### DEVELOPER APPLICATION FOR PAYMENT (Form 4023)

From (Developer): To (EDC):  Attention:	Application No: Contract No: Period From: Period To: Project No: Project Name:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;"><b>FOR OFFICE USE</b></td> </tr> <tr> <td style="width: 50%;">Entered _____</td> <td style="width: 50%;">Amt _____</td> </tr> <tr> <td>Date _____</td> <td>Ret _____</td> </tr> <tr> <td>Appl No _____</td> <td>Ded _____</td> </tr> <tr> <td></td> <td>Net _____</td> </tr> <tr> <td></td> <td>Approval _____</td> </tr> <tr> <td></td> <td>Date: _____</td> </tr> </table>	<b>FOR OFFICE USE</b>		Entered _____	Amt _____	Date _____	Ret _____	Appl No _____	Ded _____		Net _____		Approval _____		Date: _____
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Entered _____	Amt _____															
Date _____	Ret _____															
Appl No _____	Ded _____															
	Net _____															
	Approval _____															
	Date: _____															

**CERTIFICATE OF CONSULTANT:**

The undersigned Developer certifies that to the best of Developer's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by Developer for Work for which previous Applications for Payment were issued and payments received from the EDC, and that current payment shown herein is now due and, further, that Consultant has no basis in events occurring before the date of this Application for Payment for claims for additions to the Contract Amount except for such claims with respect to which Developer has previously given written notice to EDC and which have been approved by EDC as a Contract Revision. Further, Developer, upon payment of the sum requested in this Application for Payment, hereby waives all its lien rights, if any, with respect to Work for which payment is claimed in this or any preceding Applications for Payment, except as to retainage currently being withheld by EDC, if any.

Signed: \_\_\_\_\_

Date:                      1  

Name / Title: \_\_\_\_\_

**STATEMENT OF CONTRACT:**

Attach additional sheets to substantiate requested amount as necessary.

ORIGINAL CONTRACT AMOUNT ..... \$ \_\_\_\_\_

Change Orders No \_\_\_ through \_\_\_ ..... \$ \_\_\_\_\_

CURRENT CONTRACT AMOUNT ..... \$ \_\_\_\_\_

TOTAL COMPLETED & STORED TO DATE ... \$ \_\_\_\_\_

RETAINAGE \_\_\_\_\_% ..... \$ \_\_\_\_\_

TOTAL EARNED LESS RETAINAGE ..... \$ \_\_\_\_\_

LESS PREVIOUS REQUESTS ..... \$ \_\_\_\_\_

CURRENT AMOUNT DUE ..... \$ \_\_\_\_\_

State of: \_\_\_\_\_ County of: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**SCHEDULE OF VALUES:**

Account	Description	Current Contract Amount	Previous Requests	Current Amount Due	Total Work In Place	Percent Complete
		\$	\$	\$	\$	
		\$	\$ -	\$	\$	
		\$ -	\$ -	\$ -	\$ -	
		\$	\$	\$	\$	
		\$	\$	\$	\$	
		\$	\$	\$	\$	
		\$	\$	\$	\$	
		\$	\$	\$	\$	
		\$	\$ -	\$	\$	
		\$	\$ -	\$ -	\$ -	
		\$	\$	\$	\$	