

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NORTH BEND
AND SI VIEW METROPOLITAN PARK
DISTRICT FOR THE TOLLGATE
FARMSTEAD IMPROVEMENTS**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2020, by and between the City of North Bend, a municipal corporation of the State of Washington (the “City”) and the Si View Metropolitan Park District, a Washington metropolitan park district (“the District”), jointly, (the “Parties”).

WHEREAS, District manages Tollgate Farm Park for the City of North Bend under an Interlocal Agreement for the Development, Maintenance, Scheduling and Operation of Tollgate Farm Park approved pursuant to North Bend City Council Resolution 1448; and

WHEREAS, District has proposed to construct improvements to Tollgate Farm Park consisting of a new barn, parking area located off Bendigo Boulevard N., agricultural wash station, and other associated improvements (the “Project”); and

WHEREAS, this form of development is consistent with North Bend’s Comprehensive Plan goals and policies for this area; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern, and vest the development, use and mitigation of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by local government planning under RCW Chapter 36.70A; and

WHEREAS, a development agreement must be approved by ordinance or resolution after a public hearing pursuant to RCW 36.70B.200; and

WHEREAS, on September 1, 2020 the City Council passed Resolution No. 1950, approving and authorizing the Mayor to enter into this Agreement on behalf of the City;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. The Project Site. The Project Site consists of King County tax parcel 042308-9014, located within Tollgate Farm Park in the City of North Bend. The Project Site includes the existing Tollgate Farmhouse at 901 Bendigo Boulevard N. The remainder of the Project Site contains gravel pathways, an existing gravel driveway, trees, shrubs or grass and gravel or dirt drive areas. The site is legally described in the attached **Exhibit A**.

2. The Project. The Project is the construction of the Tollgate Farmstead improvements, consisting of a new barn, parking area located off Bendigo Boulevard N., agricultural wash station, and other associated improvements located on the Project Site as more fully identified and described on the Draft Site Plan included as Exhibit B.

3. Exhibits. The following exhibits, attached hereto, are incorporated herein and made part of this Agreement by this reference:

- A. Exhibit A: Project Site – Legal Description;
- B. Exhibit B: Draft Site Plan

4. Effective Date and Duration. This Agreement shall commence upon the effective date of the City Council resolution approving this Agreement (the “Effective Date”), and shall continue in force for a period of ten (10) years (the “Initial Term”) unless extended or terminated as provided herein. Following the expiration of the Initial Term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Parties.

5. Planning and Development.

A. Vested Development Standards. Except as otherwise specifically provided in this Agreement, the Project shall be completed in accordance with and District shall be vested to all development and design standards of the North Bend Municipal Code, and all applicable environmental, building, and construction codes, and regulations contained therein, in effect at the time of submittal of a complete permit application.

B. Undergrounding of overhead utility lines – Not required. Due to the more rural context of Tollgate Farm Park with its associated agricultural uses, and the extensive amount of overhead utilities along the frontage of the Project Site, for which the cost of undergrounding would be excessive relative to the cost of the remainder of the Project, the City finds that undergrounding of the overhead utility lines along rights-of-way fronting to the Project Site is not in the best interest of the public and shall not be required for the Project.

C. Street Frontage Improvements to Bendigo Boulevard N. Due to the presence of the existing State Route 202 Bridge over Ribary Creek along the street frontage of the Project Site to Bendigo Boulevard N., and inability to add a shoulder and sidewalk thereto without reconstruction of this bridge, the cost of which would far exceed the cost of the Project, the City will not require

street frontage improvements to the south side of Bendigo Boulevard N. and finds that pedestrian access to Tollgate Farm Park is available on the north side of Bendigo Boulevard N., crossing over, and back under the Ribary Creek Bridge via an existing pedestrian pathway.

D. **Street Frontage Improvements NE 8th Street.** Due to the separation of NE 8th Street from the Project Site by Ribary Creek and corresponding lack of ability to provide pedestrian or vehicular connection from NE 8th Street into the Project Site, District shall not be required to construct frontage improvements described in City code consisting of paved shoulder, curb, gutter, planter strip and sidewalk. In place of such frontage improvements, District shall install a gravel shoulder along the Project Site's street frontage to NE 8th Street. The final design of the gravel shoulder improvements to NE 8th Street shall be approved by the City's Public Works Director. Construction of the gravel shoulder shall be installed before final approval and certificate of occupancy for the Project.

6 Vested Rights. The City's Development Regulations, including building, fire, public works, land use, signage and other regulations shall govern unless specifically addressed otherwise in this Agreement. No vested rights are created by this Agreement except as expressly stated herein; provided, however, that the City retains and reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

7. Permits Required. District shall obtain all permits required under the North Bend Municipal Code ("NBMC") for the Project.

8 Further Discretionary Actions. District acknowledges that the City's land use and other regulations contemplate the exercise of further discretionary powers by the City including but not limited to the exercise of authority under the State Environmental Policy Act ("SEPA"). Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to otherwise limit the discretion of the City and any of its officers or officials in complying with or applying ordinances and laws applicable to the development of the Project.

9. Existing Land Use Fees and Impact Fees.

A. District acknowledges and agrees that land use, building, fire, public works, and sign fees adopted by the City as of the Effective Date of this Agreement may be increased by the City from time to time, and are applicable to permits and approvals for the Project Site, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, in accordance with Title 17 of the North Bend Municipal Code, unless the City exercises its discretion to mitigate any such fees in a manner consistent with other applications and Projects in the City.

10. Notice of Default/Opportunity to Cure/Dispute Resolution.

A. In the event a party, acting in good faith, believes the other party has violated the terms of this Agreement, the aggrieved party shall give the alleged offending party written notice of the alleged violation by sending a detailed written statement of the alleged breach. The alleged offending party shall have thirty (30) days from receipt of written notice in which to object, or to

cure the alleged breach. If the alleged offending party objects, the parties shall meet and attempt to resolve any dispute arising out of this Agreement. This notice and meeting requirement is intended to facilitate a resolution by the parties of any dispute prior to the initiation of litigation or other forms of alternative dispute resolution. A lawsuit to enforce the terms of this Agreement shall not be filed until the later of either: (1) the end of the 30-day cure period or (2) the conclusion of any agreed alternative dispute resolution process.

11. Amendment; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of the parties as provided in Section 24 herein, provided that any such amendment shall follow the process established by law for the adoption of a development agreement.

12. Termination.

A. This Agreement shall terminate and be of no further force and effect if District does not construct the Project as contemplated by the permits and approvals obtained in connection with the Project and this Agreement, or submits complete applications for development of the Project Site that are inconsistent with this Agreement.

B. This Agreement shall terminate either: (1) upon the expiration of the Initial Term identified in Section 4 above, or (2) when the Subject Property has been fully developed *and* all of District's obligations in connection therewith are satisfied as determined by the City, whichever first occurs. Upon termination of this Agreement under this Subsection 12(B), the City shall record a notice of such termination in a form satisfactory to the City Attorney.

C. This Agreement shall terminate upon District's abandonment of the Project. District shall be deemed to have abandoned the Project if District has not submitted a complete application for some portion of the Project within one year of the Effective Date noted above.

13. Effect of Termination on District's Obligations. Termination of this Agreement shall not affect any of District's obligations to comply with (a) the City Comprehensive Plan or any applicable zoning code(s), subdivision maps or other land use entitlements approved with respect to the Project Site; (b) any conditions or restrictions specified in this Agreement to continue after the termination of this Agreement; or (c) obligations to pay assessments, liens, fees, or taxes, unless the termination or abandonment of the Project nullifies such obligations.

14. Effect of Termination on City. Upon termination of this Agreement, the City shall have no further obligations hereunder.

15. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land, and the benefits and burdens shall bind and inure to the benefit of the Parties. District shall be obligated and bound by the terms and conditions of this Agreement, unless the District has abandoned the project and no other party has started or continued construction of the Project pursuant to this Agreement. A copy of the fully executed Agreement shall be recorded in accordance with Section 25 herein.

16. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement by any party in default hereof.

17. Third Party Legal Challenge. In the event any legal action is commenced by any person or entity other than a Party to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to District. The District shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle. This section shall survive the termination of this Agreement.

18. No Presumption Against Drafter. District represents that it has been advised to seek legal advice and counsel from its attorney concerning the legal consequences of this Agreement, that it has carefully read the foregoing Agreement, and knows the contents thereof, and signs the same as its own free act, and that it fully understands and voluntarily accepts the terms and conditions of this Agreement. Both parties have had the opportunity to have this Agreement reviewed and revised by legal counsel, and the parties agree that no presumption or rule that ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

19. Notices. Notices, demands, or correspondence to the City and District shall be sufficiently given if dispatched by prepaid first-class mail to the following addresses:

TO CITY: David Miller, City Administrator
 City of North Bend
 920 SE Cedar Falls Way
 P.O. Box 896
 North Bend, WA 98045

TO DISTRICT: Travis Stombaugh
 Si View Metropolitan Park District
 PO Box 346
 North Bend, WA 98045

Notice to the City shall be to the attention of both the City Administrator and the City Attorney. The parties hereto may, from time to time, advise the other of new addresses, including e-mail addresses, for such notices, demands, or correspondence.

20. Assignment. This Agreement shall be binding and inure to the benefit of the parties. District shall not assign its rights under this Agreement without the written consent of the City, which consent shall not unreasonably be withheld.

21. Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie only in King County Superior Court.

22. Attorneys' Fees. In the event of any litigation or binding dispute resolution process between the Parties regarding an alleged breach of this Agreement, the prevailing Party shall be entitled to an award of its costs, attorneys' fees, and expert witness fees.

23. Severability. The provisions of this Agreement are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this Agreement, or the validity of its application to other persons or circumstances.

24. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the Parties hereto. Amendments made in accordance with Section 11 herein shall be incorporated by written amendments or addenda signed by both parties and recorded pursuant to Section 25, below.

25. Recording. District shall record an executed copy of this Agreement with the King County Auditor, pursuant to RCW 36.70B.190, no later than fourteen (14) days after the Effective Date and shall provide the City with a conformed copy of the recorded document within thirty (30) days of the Effective Date.

By their signatures below, the persons executing this Agreement each represent and warrant that they have full power and authority to bind their respective organizations, and that such organizations have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

CITY OF NORTH BEND

SI VIEW METROPOLITAN PARK DISTRICT

By: _____
Rob McFarland, Mayor

By: _____
Travis Stombaugh, Executive Director

Attest/Authenticated:

Susie Oppedal, City Clerk

Approved As To Form:

Mike Kenyon, City Attorney

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EXHIBIT A:

PROJECT SITE – LEGAL DESCRIPTION

PARCEL A OF CITY OF NORTH BEND LOT LINE ADJUSTMENT NO 125-078 RECORDING NO 20011217900009 SAID PARCEL A DEFINED - SE 1/4 OF SW 1/4 LESS S 20 FT LESS CO ROADS LESS STATE ROAD NO 2 LESS PORTION LY ELY OF SR 202 LESS E 606.25 FT

Exhibit B: Site Plan