



A COMMUNITY OF CHOICE

*Other item*

## OFFICE OF THE CITY ENGINEER

2101 O'Neil Avenue Room 206

Cheyenne, Wyoming 82001

Phone (307)637-6268 Fax (307)637-6256

# MEMORANDUM

DATE: May 15, 2022  
TO: Honorable Mayor Patrick J. Collins  
Members of the City Council

FROM: Thomas D. Cobb, PE, City Engineer

SUBJECT: **Development Agreement between City of Cheyenne and PKT Development, LLC, a Wyoming Limited Liability Corporation**

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Please find the attached proposed Development Agreement between City of Cheyenne and PKT Development, LLC, a Wyoming Limited Liability Corporation being initiated by the City Engineering and Planning and Development Departments.

### Reason for Agreement:

The primary reasons for the Development Agreement:

- Defines offsite improvement responsibilities of the parties involved.
- Two (2) public capital improvement projects are anticipated adjacent to this development which benefit the community and PKT Development, LLC. The first is the Dell Range Boulevard roadway project (College Drive to VanBuren Avenue) with a total cost estimated. The second is the Whitney Road roadway and Dell Range Blvd. intersection improvement project. The first is programmed by the City of Cheyenne and the second through cooperative agreement with the state, city, and county.

The financial contribution of the shall be initial established by cost estimates based on most current cost data such as the annual the WYDOT bid cost data for the anticipated construction year. The cost estimate shall be in an amount that allows for the completion and operation of all required development improvements, in accordance with design and time specifications. If the actual cost of construction exceeds 110% of the estimated total cost, all parties shall agree to pay their pro rata share of the additional cost.

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The financial contribution of the developer for the construction shall be based on the proportional amount of total anticipated daily traffic volume generated by the development compared to the total projected 20 year anticipated daily volume of the roadway.

- Allows and defines parameters for a cash-in-lieu alternatives for the Developer for Open Space and potential of reimbursement for additional dedication right-of-way.

**Cost and Funding:**

The agreement does not anticipate any costs to the City of Cheyenne for this agreement. The Developer may receive credit for Offsite Developer Anticipated Public Improvement Impact Costs.

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2022, by and between the City of Cheyenne, Cheyenne, Wyoming, a municipal corporation, hereinafter referred to as the "City" and PKT Development, LLC, a Wyoming Limited Liability Corporation, hereinafter referred to as the "Developer".

**RECITALS**

WHEREAS, Developer is developing a subdivision to be known as Meadowlark Estates 2<sup>nd</sup> Filing final plat situated in the County of Laramie, State of Wyoming, (herein referred to as "Development") legally described as follows, to wit:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST ONE-QUARTER OF SECTION 24, TOWNSHIP 14 NORTH RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN. COMMENCING AT THE CITY OF CHEYENNE CONTROL POINT "DELL RANGE." THENCE N74°53'24"W A DISTANCE OF 874.14 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF DELL RANGE BOULEVARD BEING THE TRUE POINT OF BEGINNING. THENCE ALONG NORTH RIGHT OF WAY LINE OF DELL RANGE BOULEVARD N89°44'57"W A DISTANCE OF 1748.53 FEET TO A POINT; THENCE N00°26'28"E A DISTANCE OF 865.33 FEET TO A POINT; THENCE S56°16'47"E A DISTANCE OF 187.03 FEET TO A POINT; THENCE S56°14'01"E A DISTANCE OF 252.18 FEET TO A POINT; THENCE S56°12'59"E A DISTANCE OF 295.28 FEET TO A POINT; THENCE S56°13'08"E A DISTANCE OF 303.74 FEET TO A POINT; THENCE S89°50'57"E A DISTANCE OF 312.23 TO A POINT; THENCE S89°52'00"E A DISTANCE OF 318.17 FEET TO A POINT; THENCE S60°00'18"E A DISTANCE OF 345.22 FEET; THENCE S22°34'36"W DISTANCE OF 131.84 TO THE POINT OF BEGINNING. SAID PARCEL CONTAINS 17.12 ACRES MORE OR LESS.

WHEREAS, the Development will result in impacts to the City's infrastructure system;

WHEREAS, the purpose of this agreement is to outline responsibilities of the City and the Developer for offsite public infrastructure improvements relating to the Development;

WHEREAS, the Development requires construction of offsite improvements to serve the Development.

WHEREAS in association with the Development, a traffic study and trip generation table (Exhibit A) was provided identifying that in 2040 the Development contributed by the Residential/ Commercial Components of the project will contribute 1.20%/ 3.61% of the traffic volume on Dell Range Boulevard from College Drive to VanBuren and 1.48%/ 4.45% from VanBuren Avenue.

WHEREAS, the City, Laramie County, and WYDOT are proceeding with roadway and intersection improvements to Dell Range Boulevard and Whitney Road to address projected traffic volumes.

WHEREAS the City, County and WYDOT have programmed improvements to Dell Range Boulevard and a portion of Whitney Road and intend to complete design and construct the improvements in fiscal years 2023 to 2024.

NOW, THEREFORE, in consideration of the promises of the parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference into this Agreement as though set forth at length and shall be separate design plans from the internal civil improvements.

2. Developer shall construct, at his/her cost, all public and private improvements (development improvements) necessitated by the development itself and required to mitigate offsite impacts associated with the development.
3. Two (2) public capital improvement projects are anticipated adjacent to this development. The first is the Dell Range Boulevard roadway project (College Drive to VanBuren Avenue). The second is the Whitney Road roadway and Dell Range Blvd. intersection improvement project. The first is programmed by the City of Cheyenne and the second through cooperative agreement with the state, city, and county. These projects will require financial contribution from the developer. The financial contribution of the developer for the construction shall be based on the proportional amount of total anticipated daily traffic volume generated by the development compared to the total projected 20 year anticipated daily volume of the roadway. The traffic volume generated by the development shall be estimated using the full build-out utilizing the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual. The development use category that most closely represent the planned business function or residential components of the developed determined by the approved Traffic Impact Study or the City Engineer shall be utilized for this calculation.

The financial contribution of the shall be initial established by cost estimates based on most current cost data such as the annual the WYDOT bid cost data for the anticipated construction year. The cost estimate shall be in an amount that allows for the completion and operation of all required development improvements, in accordance with design and time specifications. If the actual cost of construction exceeds 110% of the estimated total cost, all parties shall agree to pay their pro rata share of the additional cost. The financial contribution shall be paid to the City of Cheyenne as outlined in Section 7 below.

4. Where sidewalks are installed, landscaping and irrigation shall be provided by the Developer between the sidewalk and curb in accordance with the City of Cheyenne Unified Development Code, and landscape buffering shall be provided between residential lots and collector or arterial streets. Maintenance of this area will be provided by the developer or his designee thereafter.
5. Dell Range Boulevard improvements from the end of the intersection of Dell Range Boulevard and Whitney Road improvements currently under design by Tri Hydro to the east end of the Development along Dell Range Boulevard including the Whitney Road and Dell Range intersection improvements.
  - a. Intersection Design – by WYDOT, Laramie County, and City’s project consultant with public street accesses as depicted on the Development.
  - b. Off-site sewer infrastructure: 100% Developer funded including asphalt repair to Whitney Road.
  - c. Off-site water infrastructure: 100% Developer funded from Lark Drive, as shown on the Development, to a connecting main in Saddle Ridge Trail as determined by the Board of Public Utilities.
  - d. Storm sewer from US 30 to Dell Range Boulevard and Whitney intersection: 100% funded by WYDOT, Laramie County, and/or City.
  - e. Dell Range Boulevard and Whitney Road and Dell Range Boulevard Intersection Improvements adjacent to the development:
    - i. Greenway
      1. Developer will design, construct, and provide public access for a ten (10) foot wide public greenway along the northern ROW of Dell Range Boulevard from the Whitney Road intersection to the eastern limits of the

Development. It is mutually understood and agreed that the greenway will be designed, constructed, and installed at the expense of the Developer (or assigned entities as approved by the City) and shall be designed and constructed to City standards and other specifications as found in the City of Cheyenne and Board of Public Utilities' Construction Specifications and Standard Drawings, 2014. Timing of this sidewalk installation will be after the WYDOT, Laramie County, and City improvement to Dell Range Boulevard have been substantially completed to minimize damage to the new installed greenway.

2. Costs associated with greenway construction oversizing beyond a City-standard sidewalk may be reimbursed to the Developer in an amount not to exceed any required community facility fees and any other required open space system cash in-lieu payments.

ii. Curb and Gutter

1. 100% Developer funded for any areas not constructed with the Whitney Road and Dell Range Intersection Project which are adjacent to the developer's property and along the north side of Dell Range Boulevard or the southern boundary of Development.

f. Whitney Road ROW Improvements:

i. Sidewalk, curb, and gutter

1. 100% Developer funded City standard sidewalk for any areas not constructed with the Whitney Road and Dell Range Intersection Project which are adjacent to the developer's property and along the east side of Whitney Road on the west boundary of Development and through the intersection of Porter Drive.
2. Curb and gutter shall not be required north of the Porter Drive intersection with Whitney Road.

g. Cooperative Agreement Construction Costs to the City of Cheyenne.

- i. The Developer shall contribute 1.48% for residential and 4.45% for commercial portions of the developer's project with the exception of cost associated with the construction of the U.S. 30 South Service Road.

6. Dell Range Boulevard Reconstruction Project (College Drive to VanBuren Avenue)

a. Roadway surfacing components (i.e. surfacing, curb and gutter, valley pans, fillets, signals, signs, pavement markings, and signs).

- i. The Developer shall contribute 1.20% for residential and 3.61% for commercial portions of the developer's project.

b. Other miscellaneous items such as mobilization, insurance, bonding, traffic control, surveying, etc.

- i. The Developer shall contribute 1.20% for residential and 3.61% for commercial portions of the developer's project of the proportionate share and remainder by others.

7. All Offsite Developer Anticipated Public Improvement Impact Costs specified herein and summarized in Exhibit B are due as follows:

a. Residential Land Use Component.

- i. Prior to City acceptance of public improvements within the Development.

b. Commercial Land Use Component

- i. 50% due prior to the Issuance of Certificate of Occupancy for any commercial building within the development.
- ii. 10% minimum of the original balance for each year up to a maximum of five (5) years from the first 50% payment date.

8. **Reimbursement of Community Facility Fees**

- a. The regulations of the City of Cheyenne, specifically Article 4.2, "Community Facilities and Fees" of the Unified Development Code (UDC) require that, at the time of filing the Final Plat, Developer must pay a Community Facility Fee, (Land Acquisition and Infrastructure Fee, PAI) of \$700.00 per acre. In addition, Developer will be responsible for paying Residential and Non-Residential Enhancement Fees in accordance with the UDC when building permit applications are submitted.
- b. The regulations of the City of Cheyenne, specifically Article 4.4, Open Space of the Unified Development Code (UDC) require that a development provide 750 square feet per dwelling unit or 8% of the gross area of the proposed development parcel, including lands to be platted as rights-of-way, whichever is less. This open space may also be fulfilled by cash in-lieu payment. The required open space dedication for the Development is 23,800 square feet (41,250-17,450 square feet credit for ROW dedication) square feet. For the purposes of calculating an in-lieu fee, a value of \$0.24 per square foot, totaling \$5,712.00 is deemed appropriate and is hereby agreed upon by the City and Developer to satisfy the open space system requirements of Article 4.4 of the UDC. Cash in lieu payment is due prior to final plat recording. As cash in-lieu payments for open space may be used to create open space facilities, the City and Developer agree that the cash in-lieu payment is eligible for reimbursement.
- c. The City and Developer agree that the construction described in this agreement make Developer eligible for the reimbursement of Park Fees (PAI & PEA) and open space cash in-lieu, up to the value of the improvements or the fees actually paid, whichever is less.
- d. The City agrees to reimburse Park Fees to Developer upon the completion and acceptance of all agreed upon improvements as outlined in this agreement. The reimbursement shall include fees paid for Development and any cash in-lieu payments required by UDC Article 4.4. However, the amount may not exceed the actual amount paid for improvements by Developer.
  - i. The City and Developer acknowledge that reimbursement may occur prior to collection of all projected fees.
  - ii. After the City accepts the improvements described herein in writing Developer shall make written request for reimbursement of fees within ninety (90) days of city acceptance of the improvements.
  - iii. The City shall reimburse the agreed upon funds within ninety (90) days of receiving the written reimbursement request from Developer for funds already received.
- e. Any changes in the development program or in the City of Cheyenne's park fee structure that results in an increase of Park Fees due the City of Cheyenne within the ten (10) years immediately following the execution of this Agreement shall be reimbursable to Developer. Reimbursement may be requested by Developer within ninety (90) days after the final building permit is issued for Development. The City of Cheyenne shall reimburse Developer within ninety (90) days of receiving the written reimbursement request from Developer.

i. The fees reimbursable to Developer for the Development Final Plat cannot exceed the lesser of:

1. The value of the improvements accepted by the City of Cheyenne.

OR

2. The amount of Park Fees paid to the City of Cheyenne during the development of Development.

9. Whitney Road Sewer from Porter Drive to the north to the extent needed for future connection to a lift station forced main to be designed and installed by Whitney Ranch developer under separate agreement.
10. Binding Effect. This Agreement shall run with the Property for a period of fifteen (15) years after approval of all phases of the Development by the City. This Agreement shall also be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors, grantees, and assigns. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.
11. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between the City and the Developer.
12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.
13. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Wyoming.
14. Governmental Immunity. The City of Cheyenne, along with its officials and employees, does not waive its governmental immunity by entering into this Agreement, except to the extent necessary for the parties to pursue a contract action to clarify or enforce the written terms of the Agreement. Furthermore, the City specifically retains all immunities and defenses available to it as a sovereign or governmental entity pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other relevant state and federal law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be constructed as a waiver of governmental immunity. The parties agree that any ambiguity in this Agreement shall not be strictly construed, either against or for either party, except that any ambiguity as to governmental or sovereign immunity shall be construed in favor of governmental immunity.
15. Entire Agreement. This Agreement (including the Exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, statements, understandings, negotiations, and agreements, oral or written, between the parties, if any, with respect thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

CITY:

City of Cheyenne, a Municipal Corporation

\_\_\_\_\_  
By: Patrick Collins, Mayor

ATTEST

\_\_\_\_\_  
Kristina F. Jones

DEVELOPER:

PKT Development, a Limited Liability Corporation

\_\_\_\_\_  
By: Peggy Tilton, Managing Member, as Registered Agent

ACKNOWLEDGEMENTS

State of Wyoming     )  
                                  ) ss.  
County of Laramie     )

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Peggy Tilton as Registered Agent for PKT Development, LLC.

Witness my hand and official seal.

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

My commission expires: \_\_\_\_\_