



## **ANNEXATION AGREEMENT Henrickson South 2020 Annexation**

THIS AGREEMENT is made effective this 23<sup>rd</sup> day of September 2020, by and between the **CITY OF RATHDRUM**, a municipal corporation organized pursuant to the laws of the State of Idaho, hereinafter termed the "City," the address of whom is 8047 W. Main Street, Rathdrum, Idaho 83858, and **Henrickson Family Holdings, LLC**, an Idaho limited liability company, the address of whom is 575 Canterbury Lane, Moses Lake, Washington 98837, as Option Grantor, and **Bluegrass Development, LLC**, an Idaho limited liability company, whose address is 1250 Northwood Center Court, Suite A, Coeur d'Alene, Idaho 83816, as Option Grantee as found within that Notice of Option recorded with Kootenai County under document number 2626976000, collectively and/or as separate entities hereinafter termed the "Owner."

WHEREAS, the Owner has requested and consented to annexation into the corporate limits of the City of Rathdrum; and

WHEREAS, the Owner owns property which Owner wishes to develop in accordance with zoning designations applied by the City of Rathdrum. Said property consists of approximately 227.7 acres of real property and is more particularly described as follows:

**PARCEL I:**

THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 51 NORTH, RANGE 4 WEST BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO.

EXCEPT THAT PORTION LYING WITHIN THE SPOKANE INTERNATIONAL RAILWAY RIGHT-OF-WAY.

**PARCEL II:**

THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 51 NORTH, RANGE 4 WEST BOISE MERIDIAN, KOOTENAI COUNTY, STATE OF IDAHO.

EXCEPT THAT PORTION LYING WITHIN THE SPOKANE INTERNATIONAL RIGHT-OF-WAY.

WHEREAS, the annexed area incorporates those portions of N Meyer Road and W Wyoming Avenue lying adjacent to the boundaries of said annexed real property and all of the right of way of the Union Pacific Railroad / Spokane International Railway lying within the bounds of said annexed real property, the total of which all property and right of way is 238.08 acres; and

WHEREAS, the Mayor and City Council of the City of Rathdrum have determined it to be in the best interests of the City to annex the Described Lands, subject to the Owner performing the covenants and conditions hereafter set forth;

NOW THEREFORE, IN CONSIDERATION of the covenants and conditions set forth herein, the parties agree as follows:

**1.0 Purpose:**

Owner(s) enter into this Agreement to obtain annexation of the Described Lands, while City seeks to obtain partial mitigation of the effects of annexation of the Described Lands. Owner acknowledges that City has no duty to annex the Described Lands and that the promises of Owner constitute an inducement for City to do so. The term "Owner" is deemed to include any successor in interest in the Described Lands.

For the Purposes of this Agreement, the term "development" shall include, but not be limited to subdivisions, light industrial, public, commercial, residential, or public utility construction on any portion of the described lands.

**2.0 Municipal Utilities:**

**2.1 Water:** Owner agrees to use a reasonably available City-designated public water supply system at such time as the Described Lands are developed. The Owner agrees to transfer the Owner's substitute water rights which are perfected under IDWR Water Right 95-2112 in lieu of the water right associated with the Described Lands at the time of or prior to recordation of this Agreement. Use of the existing on-site water right and irrigation system will be allowed for agricultural or other purposes as the Owner sees fit. Transfer of the water rights does not eliminate the requirements for the Owner to construct the necessary infrastructure to serve the Described Lands. Terms of service to be provided by a water purveyor other than the City are subject to the policies of that independent public entity.

**2.1.1** At the time of any subsequent development, the Owner will be required to construct all water infrastructure in conformance with the most current adopted version of the City of Rathdrum's Master Plan Update, State law, and all City policies and standards.

**2.1.2** At such time as Owner connects to the Rathdrum Water System, Owner agrees to be responsible for all required fees and charges; including all connection and/or capitalization charges generally applicable at the time service is requested. In addition, the cost for development of all on-site and off-site infrastructure is the responsibility of the Owner.

**2.1.3** All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer or Public Works Director with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with

applicable City requirements. A representative of the City shall be present at the pressure testing of all water mains. The City shall be notified at least twenty-four (24) hours before testing.

**2.2 Sewer:** Owner agrees to use City of Rathdrum Sanitary Sewer system to serve future development of the Described Lands subject to this Agreement.

**2.2.1** At the time of any subsequent development, the Owner will be required to construct all sewer infrastructure in conformance with the most current adopted version of the City of Rathdrum's Master Sewer Plan Update, State law, and all City sewer policies and standards.

**2.2.2** At such time as Owner connects to the Rathdrum Sanitary Sewer, Owner agrees to be responsible for all required fees and charges, including all connection and/or capitalization charges generally applicable at the time service is requested. In addition, the cost for development of all on-site and off-site infrastructure is the responsibility of the Owner.

**2.2.3** City does not warrant that sanitary sewer capacity will be available at the time Owner requests connection to the specified public systems. If available capacity cannot be assured as determined by the City, within 90 days of the date that service is to be provided pursuant to a written request by Owner, Owner is authorized to provide sewer service by resorting to any lawful public or private alternative so long as legal requirements can be met. Assurance of capacity may include the obligation on the part of the Owner to extend collector lines or construct sewer lift stations in order to connect to the existing sewer system. Owner recognizes that City operates its sanitary sewer system as an enterprise undertaking subject to the economic realities of such endeavors.

**2.2.4** All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer or Public Works Director with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of sanitary sewer mains. The City shall be notified at least twenty-four (24) hours before testing.

**3.0 Construct to City Standards:**

Owner agrees that all improvements required by this Agreement or by City codes shall be built to City standards or to the standards of any public agency providing service to the development, adhering to all City policies and procedures; including, but not limited to the sanitary sewer improvements, water lines, fire hydrants, flood works, storm water management, sewer pump station, curbs, sidewalks, and roads. Such policies include extending the public utility lines in a manner acceptable to the City and the serving entity

to make service available to adjoining lands and to maintain continuity of municipal systems at minimal public cost.

**4.0 *Applicable Standards:***

The Owner agrees that all laws, standards, policies and procedures regarding public improvement construction that the Owner is required to comply with or otherwise meet pursuant to this Agreement or City codes shall be those in effect when construction is commenced. If Owner fails to comply with applicable laws in the course of constructing improvements, public or otherwise, on the lands subject to this Agreement, Owner consents to the issuance of stop work orders, suspension of issuance of building permits or denial of certificates of occupancy until such compliance is attained.

**5.0 *As-Built Drawings:***

Accurate as-built drawings shall be provided to the City within thirty (30) days of the date of substantial completion of construction of any public improvements. If as-builts are not provided as required by this agreement, City is authorized to suspend further issuance of building permits or site approvals upon the Described Lands or to discontinue utility service. In no event shall City accept public improvements for maintenance or allow occupancy of constructed improvements upon the Described Lands until suitable "as-builts" are provided and until planned improvements have complied with inspection requirements and have been accepted for public maintenance or approved for private use. The use of sureties may be allowed when in the public interest and consistent with City Code requirements.

**6.0 *Considerations:***

Owner agrees to provide specific consideration to the City in the amounts and at the times specified herein. The considerations specified are deemed by the parties to be a reasonable consideration for City benefits to the Owner's use or development of its lands annexed hereby, including, but not limited to: public safety, street services, community and traffic planning, fire protection and public utilities. The considerations are detailed in Sections 6.1 - 6.3.

**6.1.** Upon the proper execution and recordation of this Agreement, the City will prepare for passage an annexation ordinance annexing the Described Lands. The parties agree that until the date of publication of the annexation ordinance, no final annexation of Owner's property shall occur.

**6.2** The right-of-way that is required as consideration of annexation is the minimum rights-of-way to be dedicated. Nothing herein is intended to over-ride or substitute for any city code or transportation plan requirements in effect at the time of development of the property as provided in Section 5.0 above. **6.3** Owner agrees to comply with Northern Lakes Fire Protection District requirements at the time of development.

**7.0 *Annexation:***

Upon proper execution and recordation of this Agreement, and upon performance of the prerequisite steps called for herein, the City will, to the extent lawfully permitted, adopt and thereafter publish an ordinance annexing the Described Lands.

**8.0 *Right of Way Dedication:***

Dedication of City standard rights-of-way and easements along N Meyer Road and W Wyoming Avenue, and any other right-of-way necessary for the development of the Described Lands and as determined necessary by the City to allow for construction and maintenance of roadways, sidewalks/paths, utilities, drainage swales, and other necessary infrastructure to City standards shall be dedicated by separate deed to the City at the time of recordation of this Agreement as follows:

- 8.1** Dedication of width of sixty feet (60') of right of way, as measured from each side of the section line, for the purpose of minor arterial roadway along the length of N Meyer Road within and adjacent to the annexed property;
- 8.2** Dedication of width of forty feet (40') of right of way, as measured from each side of the section line, for the purpose of collector roadway along the length W Wyoming Avenue within and adjacent to the annexed property;
- 8.3** Dedication of an additional width of twenty feet (20') each side of the roadways / dedications of N Meyer Road and W Wyoming Road at the intersection thereof stretching a distance of two to three hundred feet (200'-300') in each direction.

**9.0 *No Development of Annexed Lands Prior to Completion of a Development Agreement:***

Owner has requested, and the City has approved, R-1 (single family residential, low density) zoning of 166.146 acres, R-3 (multi-family residential, high density) zoning of 43.498 acres, C-1 (general commercial) zoning of 12.307 acres and O (parks / open space) zoning of 6 acres of property on the Described Lands. Rathdrum City Code 11-10-3 requires that a Development Agreement between the Owner and City be entered prior to development. As such, the Owner specifically agrees not to seek any development approval from the City including, but not limited to, applications for building permits, site development or subdivision, The Owner further agrees that the City may withhold any and all development approvals until such time as the required Development Agreement is executed by both parties and hereby waives any and all claims it may have against the City for withholding development approvals as contemplated by this Section 9.0. The parties agree that the Development Agreement must include, at a minimum, the provisions contained herein described in Sections 9.1 through 9.7.

- 9.1** Provision for a limit / cap on the construction of apartment and/or multi-family dwellings, to be limited to a total number of two hundred and fifty (250) dwelling units for all multi-family projects / development within the annexed property, combined. Apartment and/or multi-family dwelling shall mean for the purposes stated herein: A building, portion thereof, or complex of multiple buildings on a single lot which is/are designed or built, rented, leased, let or hired out to be occupied or which is occupied as the home or residence of three (3) or more families living independently of each other. The apartments shall be located in the South

West portion of the R-3 zoning between Meyer Road and the Union Pacific Railroad / Spokane International Railway.

- 9.2 Provision for a restriction of duplex dwelling units. No duplex units will be designed or constructed within the annexed property.
- 9.3 No final plat approval within the annexed area shall be given until the existing Brookshire development to the north has created 85% (390) single family residential lots through platting process to ensure continuity in development, with the exception of the commercially zoned property within this annexation area. When development occurs, such shall be logically phased starting in the northern portion of the property and proceeding southward.
- 9.4 The developer shall provide 6-8 foot fencing / walling along the railroad right of way for the provision of both safety and noise reduction. Such shall be subject to approval of the City Council or the Planning and Zoning Administrator as appropriate.
- 9.5 Provisions for the construction or implementation of surcharges and other financing methods necessary to construct and/or upgrade the necessary water, sewer and transportation infrastructure to provide service to the Described Lands. The parties generally agree that the Owner, at the Owner's sole cost and expense, shall be responsible for the necessary design and construction directly.
- 9.6 Provisions for municipal land donation as required by Rathdrum City Code 12-5 to serve the public interest, convenience, health, welfare and safety. Where a fee is preferred by the Owner to be paid in lieu of land donation, the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required to be donated in compliance with City Code. The land and/or fees received shall be without restriction or limitation of any kind.
- 9.7 Provisions for the donation and dedication of at least 6 acres of property within the Described Lands to the Panhandle Parks Foundation for Public use / open space, as determined by the City and defined within the Development Agreement.
- 9.8 A conceptual site plan depicting the disposition of uses, infrastructure, and proposed project phasing on the Described Lands.

**10.0 *Covenant to Run with the Land:***

The covenants herein to be performed by Owner shall be binding upon Owner and Owner's heirs, assigns, and successors in interest, and shall be deemed to be covenants running with the land.

**11.0 *Severability:***

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and be interpreted to effectuate the purposes of the entire Agreement to the greatest extent possible.

**12.0 Merger and Amendment:**

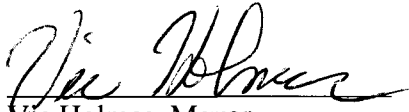
All promises and prior negotiations of the parties merge into this Agreement. The parties agree that this Agreement shall only be amended in writing and signed by both parties. The parties agree that this Agreement shall not be amended by a change in law. The parties agree that Agreement is not intended to replace any other requirement of City Code and that its execution shall not constitute a waiver of requirements established by City ordinance or other applicable provisions of law.

**13.0 Enforcement - Attorney's Fees:**

Should either party require the services of legal counsel to enforce compliance with the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and related costs of enforcement.

IN WITNESS WHEREOF, the City of Rathdrum has caused this Agreement to be executed by its Mayor and City Clerk, and the Owner has executed this Agreement to be effective the day and year first above written.

CITY OF RATHDRUM

  
Vic Holmes, Mayor  
Date: 12/16/2020

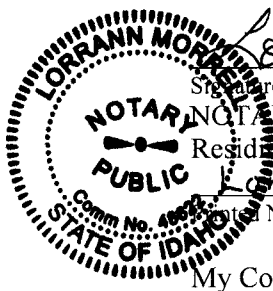
Attest:

  
Sherri Halligan, City Clerk

STATE OF IDAHO            )  
  ) ss.  
County of Kootenai        )

On this 16 day of December, 2020, before me, a Notary Public, personally appeared Vic Holmes and Sherri Halligan known to me to be the Mayor and City Clerk, respectively, of the City of Rathdrum that executed the foregoing instrument and acknowledged to me that said City of Rathdrum executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate first above written.



Signature Lorann Morrell

NOTARY PUBLIC in and for the State of Idaho

Residing at: Rathdrum

Printed Name Lorrann Morrell

My Commission Expires: 11/1/24

OWNER / LEGAL REPRESENTATIVE  
HENRICKSON FAMILY HOLDINGS, LLC

Carl S. Henricksen, Manager  
Name/Title

Carl S. Henricksen  
Signature

Date: 12-2-2020

State of Washington }  
County of Grant } ss.

I certify that I know or have satisfactory evidence that Carl S. Henricksen  
is/are the person(s) who appeared before me on this 2 day of December, 2020,  
and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that  
he/she/they was/were the person/persons/entity authorized to execute the foregoing instrument,  
acknowledged that they executed the same, and acknowledged it as the (title/capacity) Manager  
Manager of (company/institution name) Henricksen Family Holdings LLC  
to be the free and voluntary act of such party for the uses and purposes herein mentioned.

Notary Public  
State of Washington  
Leslie M Morris  
Commission No. 75177  
Commission Expires 03-01-2024

Leslie M Morris  
Signature

NOTARY PUBLIC in and for the State of \_\_\_\_\_

Residing at: Maad Hall  
Leslie M Morris  
Printed Name

My Commission Expires: 3-1-2024

