

SUBDIVISION IMPROVEMENTS AGREEMENT
TIERRA YELLOWSTONE SUBDIVISION
CITY OF BILLINGS
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Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT TIERRA YELLOWSTONE SUBDIVISION

THIS AGREEMENT is made and entered into this ____ day of _____, 20 ____, by and between **RED LODGE INVESTMENT, LLC**, whose address for the purpose of this Agreement is P.O. Box 1203, Billings, Montana 59103, hereinafter referred to as "Subdivider" or "Developer," and the **CITY OF BILLINGS**, Montana, a municipal corporation, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on the 24th day of July, 2017, the City Council conditionally approved a preliminary plat of Tierra Yellowstone Subdivision; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat; and

WHEREAS, the provisions of this Agreement shall be effective and applicable to Tierra Yellowstone Subdivision, upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana (the "Subdivision"). The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana;

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

No variances requested

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners will be required to construct or cause to be constructed that segment of the required sidewalk that fronts their property at the time of lot development.
- B. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.
- C. Lot owners should be aware that this subdivision is being built in close proximity to open agricultural areas and contains wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to the prairies is found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens. Any impacts associated with wildlife and any damage arising therefrom is the responsibility of the lot owners.
- D. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts that may be created by the City to finance the costs of the off-site Public Improvements pursuant to the terms of this Agreement and the Development Agreement. The Waiver will be filed with the plat, shall run with the land, and may be employed when public improvements that benefit this subdivision are required or requested. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

III. TRANSPORTATION

A. **Streets**

All site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, the Uniform Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.

Subdivider and City agree that the required street improvements are as follows:

1. Access to the Subdivision shall be provided by Conrad Road, a 60-foot wide dedicated public right-of-way.
2. Conrad Road shall be built to provide a 39-foot back-to-back curb street width and shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. The design section shall be submitted to and approved by the City of Billings Public Works and Fire Departments, and the plans and specifications will be submitted for review and approval through the City Private Contract process.

B. Sidewalks

No sidewalks are required with this subdivision but are included in the Waiver. Lot owners will be required to construct or cause to be constructed that segment of the required sidewalk that fronts their property at the time of lot development.

C. Street Lighting

No street lighting is required with this subdivision but are included in the Waiver.

D. Traffic Control Devices

No traffic control devices are required with this subdivision but are included in the Waiver.

E. Access

Access to the Subdivision will be provided by Conrad Road.

F. Billings Area Bikeway and Trail Master Plan (BABTMP)

The subdivision is included in the Billings Area Bikeway and Trail Masterplan; however, no on-site improvements will be required within the subdivision.

G. Public Transit

No improvements to public transit service are proposed for the subdivision but are included in the Waiver.

IV. EMERGENCY SERVICE

Access is provided to this subdivision from Conrad Road. In addition, fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings, Fire Department.

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrants in place to allow for fire suppression requirements. Prior to issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as Adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along an approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-foot-wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC and shall be in accordance with the approved stormwater management plan to be submitted to and approved by the Engineering Division, such approval not to be unreasonably withheld, conditioned or delayed.

Stormwater improvements associated with Conrad Road shall meet the requirements outlined in the *Storm Water Management Manual*. Conrad Road has an existing 24-inch City of Billings storm drain that terminates west of the common lot line of Lots 2 and 3, Block 1. A 24-inch and an 18-inch diameter storm drain is to be extended to provide a stormwater service to Lot 5 and to provide for collection of street drainage. The 18-inch storm drain stubbed to the

west end of Conrad Road is sized to accept drainage from Lot 2, Block 1 of Gabel Subdivision 4th Filing.

Each lot is provided a 6-inch diameter storm drain service from the storm drain in Conrad Road. Each lot shall meet the requirements outlined in the *Storm Water Management Manual* upon development of each lot.

VI. UTILITIES

This Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department - Distribution and Collection Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications. The appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

The Subdivider acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time new water and/or sanitary sewer service connections are made.

It is acknowledged that all fees stated above are subject to the franchise fee in effect at the time of payment.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department, and the Montana Department of Environmental Quality.

A. Water

A 12-inch diameter public water main extended within Conrad Road from the public main in South 32nd Street West will provide water service to each of the subdivision lots with 6-inch diameter service lines.

B. Sanitary Sewer

An 8-inch diameter public sanitary sewer main extended within Conrad Road from the public main in South 32nd Street West will provide

sanitary service to each of the subdivision lots with 6-inch diameter service lines.

C. Power, Telephone, Gas, and Cable Television

Private utilities shall be coordinated prior to construction to serve the Subdivision. Said utilities will serve each lot in private utility easements at locations shown on the face of the plat.

VII. PARKS/OPEN SPACE

Pursuant to Section 76-3-621(3)(b), M.C.A. and the City of Billings subdivision regulations, there is no parkland requirement for this subdivision as all lots are non-residential.

VIII. IRRIGATION

Canyon Creek Ditch crosses the Subdivision within the 20-foot wide easement as shown on the plat.

IX. POSTAL DELIVERY

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has not been performed on the Subdivision. A soils/geotechnical investigation may be required for each lot at time of development.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct all required on-site improvements with cash or by utilizing the mechanics of a special improvement district or private contracts secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the city engineer and utility department manager.

XII. LEGAL PROVISIONS

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings. This guaranty shall not apply to any failure or defect caused by changes in design, construction or materials required by the City.
- B.** The owners of the properties involved in this proposed Subdivision, by signature subscribed herein below, agree, consent, and shall be bound by the provisions of this Agreement.
- C.** The covenants, agreements, and all statements in this Agreement apply to and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties. Notwithstanding the foregoing, the City acknowledges and agrees that so long as Developer retains fee ownership of the Subdivision, the provisions of Section II will not be binding upon, and will not be covenants running with the land, with respect to said Lots.
- D.** In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement, then the prevailing party shall be entitled to reasonable attorney fees and costs.
- E.** Any amendments or modifications of this Agreement, or any provisions herein, shall be made in writing and executed in the same manner as this original document and shall, after execution, become a part of this Agreement.
- F.** Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

“SUBDIVIDER”

RED LODGE INVESTMENT, LLC.

By: _____
Greg Hardy, Member

By: _____
Les Hardy, Jr., Trustee of the
Les Hardy, Jr. Living Trust, Member

By: _____
Kay L. Hardy, Trustee of the
Kay L. Hardy Living Trust, Member

STATE OF MONTANA)
County of Yellowstone) :ss

This instrument was acknowledged before me on the ____ day of _____, 2018,
by GREG HARDY, as Member of Red Lodge Investment, LLC.

Signature of Notary

STATE OF _____)
County of _____) :ss

This instrument was acknowledged before me on the ____ day of _____, 2018,
by Les Hardy, Jr., Trustee of the Les Hardy, Jr. Living Trust and Kay L. Hardy, Trustee
of the Kay L. Hardy Living Trust, respectively, as Members of Red Lodge Investment,
LLC.

Signature of Notary

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements incident to the above which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Tierra Yellowstone Subdivision

WAIVER signed and dated this _____ day of _____, 20____

RED LODGE INVESTMENT, LLC

By: _____
Greg Hardy, Member

By: _____
Les Hardy, Jr., Trustee of the
Les Hardy, Jr. Living Trust, Member

By: _____
Kay L. Hardy, Trustee of the
Kay L. Hardy Living Trust, Member

STATE OF MONTANA)

:SS

County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2018,
by GREG HARDY, as Member of Red Lodge Investment, LLC.

Signature of Notary

STATE OF _____)

:SS

County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2018,
by Les Hardy, Jr., Trustee of the Les Hardy, Jr. Living Trust and Kay L. Hardy, Trustee
of the Kay L. Hardy Living Trust, respectively, as Members of Red Lodge Investment,
LLC.

Signature of Notary