

Return to:  
Sanderson Stewart  
1300 North Transtech Way  
Billings, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT**  
**44 WEST SUBDIVISION**  
**CITY OF BILLINGS**  
**Table of Contents**

<b>I.</b>	Variances	SIA-1
<b>II.</b>	Conditions that Run with the Land	SIA-2
<b>III.</b>	Transportation	SIA-3
	A. Streets	SIA-3
	B. Sidewalks	SIA-4
	C. Street Lighting	SIA-5
	D. Traffic Control Devices	SIA-5
	E. Access	SIA-5
	F. Billings Area Bikeway and Trail Master Plan	SIA-6
	G. Public Transit	SIA-6
<b>IV.</b>	Emergency Service	SIA-6
<b>V.</b>	Storm Drainage	SIA-7
<b>VI.</b>	Utilities	SIA-8
	A. Water	SIA-8
	B. Sanitary Sewer	SIA-8
	C. Power, Telephone, Gas, and Cable Television	SIA-9
<b>VII.</b>	Parks/Open Space	SIA-9
<b>VIII.</b>	Irrigation	SIA-9
<b>IX.</b>	Postal Delivery	SIA-9
<b>X.</b>	Soils/Geotechnical Study	SIA-9
<b>XI.</b>	Timing of Improvements	SIA-9
<b>XII.</b>	Financial Guarantees	SIA-10
<b>XIII.</b>	Legal Provisions	SIA-10

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## **SUBDIVISION IMPROVEMENTS AGREEMENT 44 WEST SUBDIVISION**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **PROPIEDAD, LLC**, whose address for the purpose of this Agreement is P.O. Box 20853, Billings, Montana 59104, and **CK LAND, LLC**, 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 \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council conditionally approved a preliminary plat of 44 West 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 44 West Subdivision, (the “Subdivision”) upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. 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; and

**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, unless otherwise secured with a cash-in-lieu payment, which shall provide for this property's future participation in a project to install said improvements.
- B.** 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.
- C.** 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. A comprehensive geotechnical study was done at the time of this plat submittal. Lot owners are encouraged to review that document and obtain additional analysis as may be required.
- 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. 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.
- E.** No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.
- F.** Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the Flood Insurance Rate Maps (FIRM)

for this area. Please be advised that special development restrictions may apply within these specified areas.

### III. TRANSPORTATION

#### A. Streets

All internal access roads and site improvements within the subdivision will be installed in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, adopted Fire Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations, unless otherwise stipulated below.

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

1. A Traffic Impact Study has been submitted to the Engineering Division for review and approval prior to final plat approval. Construction and/or financial contribution for improvements on King Avenue West and South 44th Street West, and within the subdivision, shall be in accordance with that document and as generally described herein.
2. Intersection contributions are also identified within the Traffic Impact Study and noted herein. The costs for these intersection improvements shall be paid for at time of each lot development.

Based on the Traffic Impact Study, the intersection contributions are based on the percentages noted below and shall be in two portions.

- King Avenue West and S. 48th St. West 2.17 percent
- King Avenue West and S. 44th St. West 8.58 percent

The first half of the contributions towards off-site intersection improvements shall be paid upon the development of any or all of Lots 1, 2, or 3. The second half of the contributions towards off-site improvements shall be paid upon the development of any or all of Lots 4 or 5.

3. Developer acknowledges that they shall be responsible for construction of 44th St. West from its current terminus to a termination point just north of the Hogan's Slough. Developer's responsibility shall include a thirty foot wide section of asphalt with

curb and gutter along the west side. Sidewalk on the west side shall also be included with a portion of that sidewalk be constructed as a ten-foot-wide pedestrian access path. This path shall be constructed from near Hogan's Slough to the north where it will transition to a standard sidewalk where the pedestrian path redirects to the east and connects to an existing pedestrian trail in the Shiloh Conservation area.

44th St. West will be constructed in two distinct pieces. The first portion will be completed when Lot 3 is developed. The second portion will be developed when Lot 4 is developed.

The City of Billings will be responsible for completion of the remaining east side improvements at a future date.

4. Developer acknowledges that future improvements may include the construction of a street access from the south termination of South 44th Street West to the east where it will connect to the roundabout located on Shiloh Road at the southeast corner of the Shiloh Conservation District parcel. It is anticipated that the City will create a Special Improvement District (SID) for the installation of those improvements that contemplates the developments abutting this new street improvement and those along South 44th Street West participating on a pro-rata share basis of the costs under the SID.
5. The Montana Department of Transportation controls the right-of-way for King Avenue West. Any improvement installation shall be subject to their review and approval.

## **B. Sidewalks**

1. A five-foot-wide boulevard sidewalk shall be constructed along the west and east side frontage of South 44th Street West at time of lot development fronting South 44th Street West. The cost for the east side sidewalk improvement shall be borne by the City of Billings.
2. A ten-foot-wide multi-use trail shall be constructed along the north side of the Hogan's Slough adjacent to the development at time of Lot 4 and Lot 5 development which shall be extended to the north along S. 44th St. West to a point where a crosswalk shall be installed and the path shall be directed to the east where it will connect to the existing path in the Shiloh Conservation District. The nature of the

crosswalk shall be determined in the design phase of that portion of S. 44th St. West.

3. A five-foot-wide boulevard sidewalk shall be constructed along both sides of all internal public access streets at the time of individual lot development.
4. On-site pedestrian facilities shall be provided throughout the Subdivision, as necessary. Pedestrian facilities throughout the subdivision shall be five to eight feet in width and be constructed of concrete or asphalt. The cost of all pedestrian facilities within the development shall be borne by the lot owner and shall be completed at the time of lot development.

**C. Street Lighting**

There is no street lighting anticipated with this development.

**D. Traffic Control Devices**

1. Traffic signals, signage, and striping shall be installed in accordance with the Traffic Impact Study. The timing, extent and level of participation in those improvements shall be in accordance with approval by the City of Billings. If required, Work within the King Avenue West right-of-way shall also be in accordance with the Montana Department of Transportation regulations.
2. Directional signage and traffic control devices required throughout the subdivision shall be installed by Subdivider at time of lot development. All traffic control devices will be designed in accordance with the Manual on Uniform Traffic Control Devices and shall be subject to review and approval by the City Traffic Engineer.

**E. Access**

1. The development will be accessed by a combination of two roads intersecting with South 44th Street West and access internally to the existing development to the north. All major roads within the subdivision shall lie within perpetually granted Public Utility and Access Easements as shown on the plat. Emergency access to the north shall be evidenced by a reciprocal access easement granted by the owner of that property.

2. The City and Subdivider agree that access and placement of utilities shall be provided between lots to provide interconnectivity where appropriate. Access and placement of utilities provided between subdivision lots shall be in accordance with Reciprocal Easements to be filed with the final plat.

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

The subdivision is included in the Billings Area Bikeway and Trail Master Plan. Improvements identified in that plan shall be made at time of lot development. The Subdivider shall construct a ten-foot wide multi-use trail along the north side of the Hogan's Slough.

**G. Public Transit**

Strong internal street circulation and interconnectivity is provided in the development plan for 44 West Subdivision. This will, in turn, provide sidewalks for pedestrians to access public transit routes. No other specific public transit provisions are proposed at this time.

**IV. EMERGENCY SERVICES**

Access is provided to this subdivision from South 44th Street West. In addition, fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings Fire Department. In addition, there is an emergency access along Fighting Irish Way to the north which connects to King Ave. West. Portions of this access have been developed under the previous the project to the north of 44 West Subdivision. The emergency access is gated and signed at King Ave. West. There will be an identical gate and signage placed at the north property line of 44 West Subdivision where it intersects with Fighting Irish Way. Both of these gates and signage will remain until a secondary access is developed into this area. At that time and in conjunction with the previous SIA for this access, these gates and signage will be removed.

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-feet-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 on site will be conveyed to the collection system via surface flows on the street and parking lots and through a network of catch basins, inlets, and piping which will convey runoff to the Hogan's Slough along the south boundary of the project site. This will include the termination of the inlet north of the property on S. 44th St. West.

The developer shall reconstruct Hogan's Slough at the time of development of Lot 4 and Lot 5 along the south border of the project site to the standards identified in the Final Drainage Report and the associated analysis. In consideration of this work, the City of Billings shall allow the developer to directly discharge the site's stormwater (with the use of mechanical treatment units) to the Hogan's Slough. In addition, the developer shall make a \$152,500.00 cash contribution proportioned and based upon individual lot sizes being developed to the City of Billings for construction of facilities in the City of Billings' Shiloh Conservation Area. Those facilities will then be constructed by the City of Billings in a location and at a time found to be appropriate to the City.

Based on the platted area of each lot, the costs associated with and to be paid with each lot development for the detention basin cash-in-lieu is as follows:

- Lot 1 \$ 25,500
- Lot 2 \$ 20,000
- Lot 3 \$ 31,500

- Lot 4 \$ 39,000
- Lot 5 \$ 37,500

## **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 - Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications. 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 Subdivider acknowledges that the subdivision shall be subject to the applicable system development fees in effect at the time a building permit is issued for new construction.

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**

The developer shall extend a public water main from the south termination of the public main in South 44th Street West and will provide water services to each of the subdivision lots. Extension of the water service from the easement line to the building within the lot will occur at the time of private development by the developer. Public Water Mains internal to the development shall be located within the Reciprocal Public Utility and Access Easement. The waterline in South 44th Street West shall be 12-inches in size. The City of Billings shall participate in half the cost of this line in order to provide for future looping of the water system beyond this development.

### **B. Sanitary Sewer**

The developer shall extend a sanitary sewer main from the south termination of the public main in South 44th Street West and will provide sanitary services to each of the subdivision lots. Public Sewer Mains internal to the development shall be located within the Reciprocal Public Utility and Access Easement. Extension of the sewer service from the easement line to

the building within the lot will occur at the time of private development by the developer.

**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**

Park dedication will be made through a cash-in-lieu of contribution based on 11% of the net land area being subdivided. The cash-in-lieu contribution of \$\_\_\_\_\_ shall be paid at the time of final plat.

**VIII. IRRIGATION**

Irrigation ditches that are still operational and servicing this property or downstream properties shall be maintained until no longer needed. Easements for their locations shall be provided.

**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 been performed on the Subdivision. Additional soils/geotechnical investigation may be required for each lot at time of development. Lot owners are encouraged to review that document and obtain additional analysis as may be required.

**XI. TIMING OF IMPROVEMENTS**

The initial development of 44 West Subdivision shall include the construction of South 44th Street West from the southern termination of improvements on 44th Street West and the installation of public street and utility improvements on Conservation Trail and Fightin Irish Way. This will allow for the development of Lot 3.

Secondary public street and utility improvements shall include the completion of Bulrush Trail and Sunset Vista Trail. This shall allow for the development of Lot 1 and Lot 2.

The remainder of the public right-of-way improvements for 44th Street West shall be completed prior to the development of Lot 4. With these improvements in place, Lot 4 and Lot 5 could be developed.

## **XII. 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 bond, 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.

## **XIII. 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.



“SUBDIVIDER/OWNER”

**CK LAND, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of Yellowstone )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of **CK LAND,LLC** and who acknowledged to me that said company executed the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public in and for the State of Montana

Printed name: \_\_\_\_\_

Residing at: \_\_\_\_\_

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

This agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_ day of \_\_\_\_\_, 2018.

“CITY”

**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_ and \_\_\_\_\_, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

## 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, and 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:

44 West Subdivision

“SUBDIVIDER/OWNER”

**PROPIEDAD, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA            )  
  : ss  
County of Yellowstone        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of **PROPIEDAD, LLC**, and who acknowledged to me that said company executed the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

“SUBDIVIDER/OWNER”

**CK LAND, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA        )  
  : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of **CK LAND, LLC**, and who acknowledged to me that said company executed the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Printed name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_