

SUBDIVISION IMPROVEMENTS AGREEMENT
Whitehorse Estates Subdivision, 1st Filing

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Yellowstone County

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SUBDIVISION IMPROVEMENTS AGREEMENT

Whitehorse Estates Subdivision, 1st Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between NEXCO LLC., whose address for the purpose of this agreement is 2680 Overland Ave., Suite F Billings, MT 59102, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Whitehorse Estates Subdivision, 1st Filing*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Whitehorse Estates Subdivision, 1st Filing*; and

WHEREAS, a Subdivision Improvements Agreement is required by the County prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Whitehorse Estates Subdivision, 1st Filing* 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 Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, 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

Subdivider has requested one variance from the Yellowstone County Subdivision Regulations. The variance requested is Section 4.6.B.1 in the Yellowstone County Subdivision Regulations.

II. CONDITIONS THAT RUN WITH THE LAND

- A. 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.

- B.** Shares of water will be transferred from the Big Ditch to Lots 1-12 in the proposed subdivision and divided equally among all lots. The ditch that currently runs through the proposed subdivision will be rerouted so that all lots have access to the open ditch.
- C.** There is attached hereto a Waiver waiving the right to protest the creation of a rural special improvement district (RSID) for maintenance of the interior roads within the Whitehorse Estates Subdivision, 1st Filing, which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and residents of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and resident specifically agree that they are waiving valuable rights and do so voluntarily.
- D.** Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.
- E.** Culverts and associated drainage swales shall not be filled in or altered by the Subdivider or subsequent owners.
- F.** When required by road improvements, all fences and ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- G.** Future lot owners need to be aware they are inside county zoned area and are required to obtain a zoning compliance permit before construction on the lots from City/County Planning Division.
- H.** Future maintenance of all public improvements shall be done though one (1) or more RSID(s) created as part of the SIA for this subdivision.

III. TRANSPORTATION

A. Streets

- The proposed subdivision fronts Hesper Road which is twenty-four-foot (24ft) wide asphalt with 2-foot (2ft) gravel shoulders. A sixty-foot (60ft) half width county road easement exists on Hesper Road from Whitehorse Subdivision.
- Residential streets will have an asphalt pavement width of 24-ft with 2-ft gravel shoulders. The streets will be built to County Standards as outlined in the Yellowstone County Subdivision Regulations, Figure 4.6.C.3.

- The street is being dedicated as public right-of-way to Yellowstone County as part of this subdivision.
- Maintenance of said road will be funded through the creation of a RSID. The public dedication documents and RSID waiver will be filed with the final plat documents.

B. Access

- The development has one access location on Hesper Road in which the approach is 24-feet wide within the proposed 60-foot road dedication of this subdivision and has been built to Yellowstone County Road Standards. Access to each lot will require an approach permit from the County.

C. Billings Area Bike Trail Master Plan

- Hesper Road has long range bike lanes proposed. Subdivider is not required to install bike lanes as part of this development.

IV. EMERGENCY SERVICE

The Billings Urban Fire Service Area (BUFSA) currently provides fire protection and paramedic services for the subdivision.

A new 30,000-gallon dry hydrant and water storage tank will be located in the southwestern part of Lot 4 of Whitehorse Estates Subdivision for fire protection as part of the original subdivision. Fire protection will be provided via BUFSA. Plans for the dry hydrant have been submitted to the Billings Fire Department (BFD) and are approved. The dry hydrant shall be installed by the developer, tested and inspected by the BFD prior to construction of any vertical structures within the development. Subdivider will provide Yellowstone County with a surety/bond to be held until the dry hydrant is installed upon which the surety/bond will be released.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by MDEQ, or its designee prior to final plat approval. Stormwater will be collected and routed along drainage swales along the proposed interior road of the subdivision.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval of sanitary improvements. The property owner shall make application for sanitary improvements to the Yellowstone County Sanitarian and Montana Department of Environmental Quality. 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.

A. Water

Public water service is not available to lots within the Whitehorse Estates Subdivision 2nd Filing. Individual on-site water wells shall be installed as approved by the Department of Environmental Quality and the Department of Natural Resources and Conservation.

B. Sanitary Sewer

Public sanitary sewer disposal facilities are not available to lots within the Whitehorse Estates Subdivision, 1st Filing. Individual on-site sewer systems shall be installed as approved by the Department of Environmental Quality.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will all be located within the access and utility easements.

VII. PARKS/OPEN SPACE

There will be no dedicated parkland for the proposed Whitehorse Estates Subdivision, 1st Filing. Cash-in-lieu will be paid in place of the 5% of the net land, proposed per Section 10.6 Yellowstone County Subdivision Regulations. The net acreage of the subdivision is 15.14 acres, requiring a total of 0.76 acres of dedicated parkland.

VIII. IRRIGATION

The subdivision is located within the Big Ditch Company boundary. Each lot will receive shares for water from the Big Ditch Company, prorated for the size of the lot based on the original allotment associated with the original tract. Lots will have access to Big Ditch Company facilities and each lot within the subdivision will be assessed annually by the Big Ditch Company. An HOA will be created to pay for the construction and maintenance of the open ditch lateral running through the subdivision. The original ditch will be rerouted so each lot has access to the ditch.

IX. WEED MANAGEMENT

- A. All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties within the subdivision.
- B. See filed Weed Management Plan for the Whitehorse Estates Subdivision.

X. SOILS/GEOTECHNICAL STUDY

- A. Soil data was obtained from the NRCS web soil survey. Soils consisted of Keiser silty clay loam, McRae loam, and Toluca clay loam.

- B. Assessment of a specific lot and mitigation efforts, if any, of these conditions shall be the responsibility of the lot owner.

XI. PHASING IMPROVEMENTS

There is no phasing of improvements.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Board of County Commissioners. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district or private contract, and the improvements shall be designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the State of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C of the Yellowstone County Subdivision Regulations.

XIII. LEGAL PROVISIONS

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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.
- 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 or to give any notice required herein, then the prevailing party or the party giving notice 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.

- G.** Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

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

“SUBDIVIDER”

NEXCO LLC.

By: _____

Title: _____

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 _____, known to me to be the _____ of *Nexco, LLC*, who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

This agreement is hereby approved and accepted by Yellowstone County, this ____ day of _____, 20__.

“COUNTY”
COUNTY OF YELLOWSTONE
MONTANA

County of Yellowstone
Board of County Commissioners

By: _____
Chairman

Commissioner

Commissioner

Attest: _____
County Clerk and Recorder

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 Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

