

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD SUBDIVISION, SECOND FILING  
CITY OF BILLINGS  
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**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **MCCALL DEVELOPMENT, INC.**, whose address for the purpose of this agreement is 1536 Mallowney Lane, Suite 100; Billings, Montana 59101, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of Annafeld Subdivision, Second Filing located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the \_\_ day of \_\_\_\_\_, 20\_\_, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld Subdivision, Second Filing; and

**WHEREAS**, at a regular meeting conducted on the \_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, Second Filing; and

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

**WHEREAS**, the provisions of this agreement shall be effective and applicable to Annafeld Subdivision, Second 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 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**

None requested

**II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS**

- A.** Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- B.** There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts 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 property owner or owners 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 owner specifically agree that they are waiving valuable rights and do so voluntarily.
- C.** Lot owners should be aware that this subdivision is built with a “traditional neighborhood” design. The single-family dwellings will have the garage set in the rear of the lots. The access will be provided to the garages by means of a paved alley.
- D.** Lot owners should be aware that this subdivision is zoned “Planned Development” (PD). Special zoning regulations regarding lot development will be enforced in accordance to the Amended Planned Development Agreement recorded at the Yellowstone County Clerk and Records Office under Document No. 3826023.
- E.** Lot owners should be aware that this subdivision is adjacent to wildlife habitat. Consequently, owners are advised that wildlife indigenous to the area 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 there from is the responsibility of the lot owners.

- F.** No water rights have been transferred to the individual lot owners but may be held by the Subdivider and/or the homeowners association. 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 without the permission of the controlling ditch company.
- G.** Lot owners should be aware they may be required to participate in a park maintenance district administered by the homeowners association for Annafeld Subdivision, Second Filing.
- H.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Chapter 28-201, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- I.** Lot owners should be aware that the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J.** Lot owners should be aware that Hogan's Slough adjacent to the subdivision is a major stormwater outfall for Billings west end. There is a possibility that the slough could overtop during a major storm event. Based upon the existing topography near Hogan's Slough and the Elysian Road Bridge, it is anticipated that the channel would overtop northeast of Elysian Road and flow east prior to overtopping Elysian Road. There is the possibility however that Elysian Road could be overtopped during a major storm event. If that occurs, flows not carried within the Hogan's Slough channel would be carried within the subdivision streets. The elevation of residential dwellings and commercial structures must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm. Higher house finished floor elevations may be required on a lot by lot basis.

- K.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater Management Manual*.

### **III. TRANSPORTATION**

#### **A. Streets**

1. All internal access roads and site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets within the subdivision shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All public roads will be built to provide a 34-foot back-to-back curb street width. The design cross-sections of said streets shall be submitted to, and approved by, the City of Billings Public Works Department.
3. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter will be constructed on the south side of Elysian Road adjacent to the Second Filing and any necessary pavement widening to construct a parking lane and an eastbound and westbound travel lane. Storm drain shall be installed as necessary, draining to existing storm drain constructed with Annafeld Subdivision, First Filing. The improvements for Elysian Road improvements will be completed by private contract or by SID.

A westbound left-turn bay is not required with Second Filing, but will be required with future filings of the Annafeld Planned Development. The curb and gutter installed with Second filing will be designed such that it will accommodate a future turn bay. These additional Elysian Road improvements (including additional widening, median and turn lane improvements) will be installed by private contract or SID.

4. At the time of this Filing, Phase IV of Harmony Meadows Subdivision, Second Filing has not been constructed. Therefore, a physical connection between Annafeld Subdivision and Harmony Meadows Subdivision cannot be made. Furthermore, even if the Story Road connection were constructed, the traffic generated from Annafeld Subdivision, Second Filing would be unlikely to utilize Story Road based on proximity to Elysian Road and the land uses that are currently in Harmony Meadows Subdivision. Therefore, a detailed traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision is not required for this Filing of Annafeld Subdivision. A traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision will be required with a future filing.

The Subdivider agrees to contribute up to 50 percent of the cost for design, permitting, and construction of the Hogan’s Slough crossing on Story Road. If the cash contribution is not sufficient to cover 50 percent of the crossing costs at the time of construction, the City retains the right to create a SID to recover additional design and construction costs.

The timing of the contribution for the Hogan’s Slough crossing on Story Road shall be made at the earlier of the following:

- I. At the time an Annafeld Subdivision Traffic Impact Study recommends the Story Road connection be completed.
- II. At the commencement of construction of Phase IV improvements for Harmony Meadows Subdivision, 2nd Filing.
- III. Prior to final plat approval of the final filing of Annafeld Subdivision.

5. A traffic accessibility study has been completed for the Annafeld Subdivision, Second Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider’s expense. Based on the additional lots created with Annafeld Subdivision, Second Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

South Frontage Road/Midland Road & Mullowney Lane	2.63%	\$TBD
Mullowney Lane/Elysian Road	2.50%	\$TBD
Elysian Road/East Lane	3.25%	\$TBD

Elysian Road/South Frontage Road	1.67%	\$TBD
East Lane/South Frontage Road	1.75%	\$TBD

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld Subdivision, Second Filing as submitted with the preliminary plat.

6. Subdivider shall install an all-way stop at the intersection of Elysian Road and MULLOWNEY Lane. These improvements shall be installed by private contract or SID.

**B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley approaches constructed with asphalt shall be replaced with concrete by the Subdivider at the time when home construction is complete. In the event asphalt approaches within the subdivision are not replaced with concrete within three years of the date of recording of the final plat, the City may construct the concrete approaches and assess the Subdivider for the costs associated with the approach construction. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the alley. In addition, no shrubs taller than two feet are allowed to be planted in alleys.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. Construction of sidewalks along frontage of the lots shall be installed by the lot owner at the time of lot development. Sidewalks along the street frontage shall be minimum 5-foot-wide and separated with a boulevard width not less than five feet. Developer shall construct the 5-foot wide boulevard sidewalk adjacent to private park (Lot 18, Block 4) at the time of private park development.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

A sidewalk shall not be required along the south side of Elysian Road, due to the proximity of the proposed multi-use path, as allowed by 23-406 (B) (13), BMCC.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for Second Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting at a future date and is included in the waiver of right to protest.

**E. Traffic Control Devices**

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.
3. Subdivider shall install an all-way stop at the intersection of Elysian Road and Mallowney Lane. These improvements shall be installed by private contract or SID.
4. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Elysian Road, Street A (temporary name), Street B (temporary name), Farmstead Avenue, Mollie Rose Lane, Annas Garden Lane and Norma Jean Lane. An additional existing emergency access will remain along the existing City trunk sanitary sewer easement to East Lane. Alley access is also provided to all residential lots within the subdivision.

**G. Billings Area Bikeway and Trail Master Plan**

The Billings Area Bikeway and Trail Master Plan and the Zoo Montana to Riverfront Park Trail Feasibility Study both recommend a multi-use trail

along the southern boundary of the Annafeld Planned Development. A public park on the upper bench area north of the Yellowstone River interface was dedicated with Annafeld Subdivision, First Filing, which provides an opportunity for a future extension of the trail to the east and west along Yellowstone River.

A multi-use trail has been constructed along the south boundary of Elysian Road. Said multi-use trail shall extend from the east boundary of the subdivision to the easterly right-of-way line of East Lane.

In addition, a 10-foot wide multi-use path will be provided on the west side of Annas Garden Lane, adjacent to Lots 1 and 12, Block 6, and on the south side of Norma Jean Lane, adjacent to Lots 1-5, Block 6. This multi-use path will ultimately provide a connection to a private park located in the center of the subdivision that will be created with a future filing.

#### **H. Public Transit**

There are no MET Transit routes that service this subdivision at this time. The nearest established route is at the intersection of Midland Road and Mallowney Lane. No improvements with regard to MET Transit vehicles are anticipated at this time.

### **IV. EMERGENCY SERVICE**

#### **A. Fire Hydrants**

Emergency service will be provided by the City. Placement of fire hydrants will be as required by the City of Billings Fire Department.

#### **B. Construction of Buildings**

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (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 the 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.

**C. Building Location**

All buildings shall be located on each lot so that the furthest portion of each building is within 150-feet from an approved fire department access road over an approved route excluding all carriage lanes and alleyways.

**V. STORM DRAINAGE**

- A.** A stormwater management plan shall be submitted to the Engineering Division prior to final plat approval. The storm drainage system for Annafeld Subdivision, Second Filing will consist of a curb and gutter surface collection and curb inlets that drain into storm drainage piping, as well as surface conveyance. The storm drain piping will discharge into existing storm drain piping and to an existing mechanical stormwater filtration manholes, then into Hogan’s Slough. All drainage improvements shall comply with the provisions of the City of Billings *Stormwater Management Manual* and Chapter 28, BMCC.
- B.** The mechanical stormwater filtration manholes are existing, and associated improvements are privately owned and maintained by the HOA. Annafeld Subdivision, Second Filing will be included in the HOA that is responsible to maintain these facilities. O&M requirements and HOA maintenance and fiscal responsibilities have been outlined within the Annafeld Subdivision, First Filing I O&M Manual.
- C.** Hogan’s Slough adjacent to the subdivision is a major stormwater outfall for Billings west end. There is a possibility that the slough could overtop during a major storm event. Based upon the existing topography near Hogan’s Slough and the Elysian Road Bridge, it is anticipated that the channel would overtop northeast of Elysian Road and flow east prior to

overtopping Elysian Road. There is the possibility however that Elysian Road could be overtopped during a major storm event. If that occurs, flows not carried within the Hogan's Slough channel would be carried within the subdivision streets. The elevation of residential dwellings and commercial structures must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm.

- D.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Chapter 28, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- E.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater Management Manual*.

## **VI. UTILITIES**

The 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 of/connection 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 Subdivider/owner 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.

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 Annafeld Subdivision water system consists of a series of looped water mains located in each of the local streets. The subdivision water system will consist of new 12-inch water mains in Mollie Rose Lane, and 8-inch water mains in Anna's Garden Lane, Street A (temporary name), Street B (temporary name) and Norma Jean Lane. Future filings of the Annafeld Planned Development will provide the opportunity to make additional connections to the trunk main in Elysian Road providing water main looping.

**B. Sanitary Sewer**

Sanitary sewer service to Annafeld Subdivision, Second Filing will be provided by connecting to the existing 8-inch gravity sewer main located in Farmstead Avenue, Mollie Rose Lane, Annas Garden Lane and Norma Jean Lane. An existing 24-inch trunk sanitary sewer main extends through the subdivision. All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public Works Department, Distribution, and Collection Division.

**C. Power, Telephone, Gas, and Cable Television**

Private utility facilities currently exist to serve the subdivision. The private utility facilities will be installed within the alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

**VII. PARKS/OPEN SPACE**

The subdivision lies within a planned unit development that provides for land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development, per 76-3-621(6)(a) of the Montana Code Annotated. The park and open space within the Annafeld Planned Unit Development Master Plan meets or exceeds the area of dedication required under section 76-3-621(1), MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of private park area within Annafeld Subdivision, Second Filing and the remainder was met with additional public park dedication with Annafeld Subdivision, First Filing.

In addition, the lots within Annafeld Subdivision, Second Filing (not already participating in the park SID 1404 from Annafeld Subdivision, First Filing) shall provide additional funding, up to \$1.00 per square foot of lot area), for park improvements for a previously created public park (Lot 13, Block 2 Annafeld Subdivision, First Filing) by SID. The park improvements shall be in accordance with the previously approved Annafeld Parks Master Plan – Phase I. The Subdivider shall prepare all SID documents necessary for creation, and coordinate with the City of Billings Parks and Recreation Department for review and approval. If the park improvements as defined in the Annafeld Parks Master Plan – Phase I have been completed prior to the creation of this park SID, then this park SID will no longer be required.

The current park maintenance district for Annafeld Subdivision, First Filing shall be expanded to include lots with Annafeld Subdivision, Second Filing. The Subdivider shall prepare all park maintenance district documents necessary for its expansion and coordinate with the City of Billings Parks and Recreation Department for review and approval.

#### **VIII. HOMEOWNER’S ASSOCIATIONS**

A homeowner’s association (HOA) will be established for this subdivision. The HOA will have the following responsibilities:

##### **A. Contact Information**

HOA shall provide contact information of the senior board official to the City Engineering Department upon the establishment of the HOA and/or changing of board members.

##### **B. Stormwater Drainage Facilities**

The HOA shall be responsible for the maintenance of the mechanical filtration stormwater manholes. The HOA shall share the cost of maintenance of the community stormwater facilities.

#### **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 for the subdivision. The report dated January 19, 2019, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

**XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by 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 APPLYING TO SUBDIVIDER**

- 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.
- 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.



This agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“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: \_\_\_\_\_

