

SUBDIVISION IMPROVEMENTS AGREEMENT
Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision
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(City of Billings)

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SUBDIVISION IMPROVEMENTS AGREEMENT

Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between (*Subdivider*), whose address for the purpose of this agreement is ADDRESS, hereinafter referred to as “Subdivider,” and the CITY OF BILLINGS, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on 23rd day of January, 2017, the City Council conditionally approved a preliminary plat of *Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision*; 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 *Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. Upon filing the final plat, the property described in the final plat shall automatically be released from liability under the Subdivision Improvements Agreement for the Plat of Bishop Fox Subdivision filed July 29, 2015, under Document #3342211, in the records 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

No variances are being requested for this subdivision.

II. CONDITIONS THAT RUN WITH THE LAND

- A. 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.

- 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. Refer to the geotechnical survey prepared for the Bishop Fox Major Subdivision. Additional geotechnical surveys will be required at the time each individual lot is developed.
- D. 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.
- E. 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.
- F. The subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- G. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.
- H. According to FEMA FIRM Map # 30111C1245E, the site is located in Zone X, otherwise known areas determined to be outside the 0.2% annual chance floodplain.

III. TRANSPORTATION

A. Streets

The *Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision* is adjacent to Grand Avenue and 54th Street West, each having a 120' and 100' right-of-ways, respectively. Both Grand Avenue and 54th Street have an approximate asphalt width of 24'.

A cash contribution for Grand Avenue and 54th Street West must include a half width of 20 feet of asphalt given credit for existing widths, curb and gutter plus the cost for design and construction administration. A cash contribution for the sidewalk must be made unless constructed as part of the development.

The development shall be responsible for the full cost of design and construction for the widening necessary to implement a southbound (SB) left turn lane on 54th Street West at the access opposite Payton Drive and a westbound (WB) right turn lane on Grand Avenue at the access opposite Vintage Lane. The required widening for the SB left turn lane should be primarily north of Payton Drive and as the City project installing the traffic signal at Grand Avenue and 54th Street West will be constructing the widening to the south of Payton. Construction of SB left turn lane and WB right turn lane must be done with development of Lot 1-A.

All public street improvements shall be in accordance with the Traffic Impact Study, TIS, prepared specifically for this minor subdivision.

B. Sidewalks

Improvements and/or contributions to sidewalks shall be in accordance with the above Section III. A. Handicap ramps shall be installed in accordance with current City of Billings construction standards and specifications at all driveway entrances into the subdivision.

The development of Lot 1-A will require pedestrian connections to the north and to the east aligned with the existing R/W & easement respectively, platted with the adjacent lots. The connection to the north shall extend all the way to Castle Stone Square. At the time of development of each individual lot, sidewalks providing ADA accessible pedestrian connections from the public sidewalks along 54th St W and Grand Ave shall be constructed connecting the public sidewalks to the primary buildings on each lot.

C. Street Lighting

Construction or installation of street lights is not required, but is included in the waiver.

D. Traffic Control Devices

The Subdivider shall furnish and install all traffic controls as identified during the Traffic Impact Study review process and as may be required by the City Traffic Engineer to comply with MUTCD, City Ordinances, and City traffic control policies.

The following monetary contributions for off-site intersection traffic control shall be payable at time of final plat, or prior to issuance of any building permit:

| <u>Intersection</u> | <u>Amount</u> |
|---------------------|---------------|
| Rimrock & 54th | \$5,750.00 |
| Grand & 56th | \$6,500.00 |
| Grand & 62nd | \$6,500.00 |
| Grand & 48th | \$7,750.00 |
| Grand & 54th | \$19,250.00 |

E. Access

Direct access from 54th Street West and from Grand Avenue to the lots is prohibited, except for two 50-foot wide breaks in the no-access easement as shown on the plat. The allowed access to 54th Street West shall be aligned with Payton Drive, and the access to Grand Avenue shall be aligned with Vintage Lane. The existing 40-foot wide access shared with the fire station (Lot 2) shall remain. The City reserves the right to restrict left turn egress from the Grand Avenue access opposite Vintage Lane. All new approaches shall be built in conformance with City of Billings standards and specifications.

All lots within Ammended Plat Lot 1, Block 1 of Bishop Fox Subdivision shall have a blanket reciprocal access easement between them.

F. Billings Area Bikeway and Trail Master Plan

A short range bike trail along 54th Street is shown on the master plan. There will be no bike trails built within and/or as a part of this subdivision.

IV. EMERGENCY SERVICE

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 the 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 twenty (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

Piped public storm drain mains are not available in this area. However, the West End Master Plan does recommend a future storm drain main for Grand Avenue. When a storm drain is extended, the Owner will be allowed the opportunity to connect by providing a proportionate cost share to the City. The proportionate cost would be based on the amount of flows leaving the subdivision and the capacity of the Grand Avenue storm drain main.

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. Each parcel within the subdivision shall complete and submit a stormwater management plan to the Engineering Division for review and approval at the time of development.

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/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 Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development and Franchise 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.

Any required water or sanitary sewer services for this property must be constructed prior to construction of WO 16-09 or in conjunction with WO 16-09. The cost of design, construction, and construction administration shall be the responsibility of the subdivision. WO 16-09 is anticipated to be constructed Spring/Summer 2017.

A. Water

Water is provided by the City of Billings. There is an existing 12” water main in 54th Street and a 20” water main in Grand Avenue. No new water main extensions are required for this subdivision. Domestic and fire services are proposed to be stubbed to each individual lot. All new domestic water and fire services will be installed and constructed in accordance with the most current City of Billings construction standards and specifications.

B. Sanitary Sewer

Sanitary Sewer is provided by the City of Billings. There is an existing 15” sanitary sewer main in 54th Street and a 27” sanitary sewer main in Grand Avenue. No new sanitary sewer main extensions are required for this subdivision. Sanitary sewer services are proposed to be stubbed to each individual lot. All new sanitary sewer services will be installed and constructed in accordance with the most current City of Billings construction standards and specifications.

C. Power, Telephone, Gas, and Cable Television

Existing dry utility easements are locate adjacent to the subdivision. Individual parcel owners shall make application for connection at the time of site development.

VII. PARKS/OPEN SPACE

There is no parkland requirement for the *Amended Plat of Lot 1, Block 1 of Bishop Fox Subdivision*.

VIII. IRRIGATION

There are no Irrigation Districts affected by the proposed development. Any existing ditches will remain in-place.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical report was submitted and accepted as a part of the underlying Bishop Fox Subdivision. Each individual parcel shall submit a Soils/Geotechnical Study to the Building Department at the time of site development. The study shall be prepared by a qualified Geotechnical Engineer, licensed in the State of Montana.

X. PHASING OF IMPROVEMENTS

Not Applicable to this subdivision.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract 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.
- 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.

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: _____

Return to:
City Clerk
City of Billings
PO Box 1178
Billings, MT 59103

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made this 21 day of MARCH, 2017, by and between ALBERTSON'S LLC, a Delaware limited liability company, 250 Parkcenter Boulevard, P.O. Box 20, Boise, Idaho 83126, Attn: Legal Department/Real Estate, hereinafter referred to as "DEVELOPER," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter referred to as the "CITY."

WHEREAS, DEVELOPER is (or will be) the owner of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lot 1, Block 1, Bishop Fox Subdivision, in the City of Billings, Yellowstone County, Montana hereinafter referred to as "Developer Tract".

WHEREAS, DEVELOPER has submitted to the City a Subdivision Plat to the City; and

WHEREAS, DEVELOPER desires to develop Developer Tract; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do hereby agree as follows:

1. Sanitary Sewer. The Developer Tract will be served by an existing sanitary sewer main in 54th Street West and Grand Avenue. DEVELOPER will be responsible for connecting to the sanitary sewer system in conjunction with WO 16-09 Grand Avenue Project. The City will bid and construct the sanitary sewer connections with WO 16-09. DEVELOPER will be required to pay a cash contribution for the actual cost of construction of the sanitary sewer connections.



2. Water. The Developer Tract will be served by an existing water main in 54th Street West and Grand Avenue. DEVELOPER will be responsible for connecting to the water main in conjunction with WO 16-09 Grand Avenue Project. The City will bid and construct the water connections with WO 16-09. DEVELOPER will be required to pay a cash contribution for the actual cost of construction of the water connections.
3. Payment. The project (WO 16-09) will be bid on March 21, 2017. DEVELOPER'S cash contribution for the estimated cost of the water and sanitary sewer connections is required to be submitted to CITY by March 31, 2017. If DEVELOPER'S cash contribution is not made, CITY will not issue notice to proceed for water and sanitary sewer connections. The water and sanitary sewer connections are estimated to cost \$212,268.40 pursuant to the Engineer's Opinion of Probable Cost for the project, "Additive Alternate 1 - Bishop Fox Subdivision Sewer and Water Services," dated March 16, 2017. Any change order increasing the price of such connections must be approved by DEVELOPER prior to proceeding. Once the project is complete, all construction costs associated with water and sanitary sewer connections will be reconciled. Such reconciliation will include the CITY providing DEVELOPER copies of all invoices, bills and other documentation reasonably required to substantiate the costs of the project directly related to the water and sanitary sewer connections. If there is a price increase due to approved change order(s), DEVELOPER will reimburse CITY the difference. If there is a price decrease for any reason, CITY will reimburse DEVELOPER the difference.
4. Compliance. Nothing herein shall be deemed to exempt the Developer Tract from compliance with any current or future City laws, rules, regulations, or policies that are applicable to the development, redevelopment, or use of the subject property.
5. Runs with Land. The covenants, agreements, and all statements in this Agreement and in the incorporated shall run with the land and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties. Upon completion of the project, the parties will record a termination and release of this Development Agreement.
6. Attorney's Fees. 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, including those fees and costs of in-house counsel.

AG

3810504

04/07/2017 11:51 AM Pages: 3 of 5 Fees: 35.00
Jeff Martin Clerk & Recorder, Yellowstone MT



7. *Amendments and Modifications.* Any amendments or modifications of this Agreement 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.

[signatures on the following pages]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

"DEVELOPER"

ALBERTSON'S LLC, a Delaware limited liability company

[Handwritten signature]

JPL

By: Bradley R. Beckstrom

Title: Authorized Signatory

State of Idaho)
):
County of Ada)

On this 27th day of March, 2017, before me, a Notary Public for the State of Idaho, personally appeared Bradley R. Beckstrom known to me to be the Authorized Signatory of Albertson's LLC, a Delaware limited liability company, who executed the foregoing instrument and acknowledged to me that he/she executed the same.



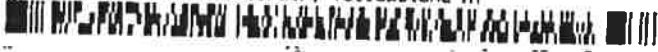
[Handwritten signature]

(Notary Signature)

Printed Name: Kayla Dawson

Residing in Boise, ID

My Commission expires: 12/14/2022



This Agreement is hereby approved and accepted by City of Billings, this 27th day of March, 2017.

"CITY"

CITY OF BILLINGS, MONTANA



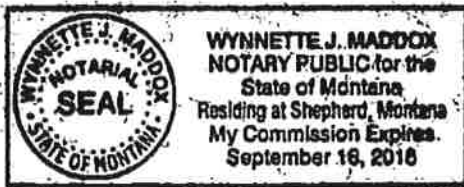
By: Thomas W. Hanel
Mayor

Attest: Aerise B. Bohman
City Clerk

State of Montana)

County of Yellowstone)

On this 6th day of April, 2017, before me, a Notary Public for the State of Montana, personally appeared Thomas W. Hanel known to me to be the Mayor of City of Billings, who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Wynnette J. Maddox
(Notary Signature)
Printed Name: Wynnette J Maddox
Residing in Shepherd MT
My Commission expires: 9/16/2018

