

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT  
DISTRICTS  
FOUNDERS PARK SUBDIVISION**

**Table of Contents  
(City of Billings)**

I.	Variances .....	1
II.	Property Conditions and Information for Lot Purchasers.....	1
III.	Transportation .....	3
	B. Sidewalks	
	C. Street Lighting	
	D. Traffic Control Devices	
	E. Access	
	F. Billings Area Bikeway and Trail Master Plan	
	G. Public Transit	
IV.	Emergency Services.....	4
V.	Storm Drainage .....	5
VI.	Utilities.....	6
	A. Water	
	B. Sanitary Sewer	
	C. Power, Telephone, Gas, and Cable Television	
VII.	Parks/Open Space .....	7
VIII.	Irrigation.....	7
IX.	Soils/Geotechnical Study .....	7
X.	Financial Guarantees.....	8
XI.	Legal Provisions Applying to Subdivider.....	8

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

**FOUNDERS PARK SUBDIVISION**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **HABITAT FOR HUMANITY – MID-YELLOWSTONE VALLEY**, whose address for the purpose of this agreement is 685 King Park Drive, Billings, Montana 59102, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, at a regular meeting conducted on the 22<sup>nd</sup> day of February, 2019, the Board of Planning recommended conditional approval of a preliminary plat of Founders Park Subdivision; and

**WHEREAS**, at a regular meeting conducted on the 25<sup>th</sup> day of February, 2019, the City Council conditionally approved a preliminary plat of Founders Park 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 Founders Park 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.

**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 with this subdivision.

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

- A.** Lot owners will be required to construct that segment of the required five-foot wide boulevard-style sidewalk that fronts their property at the time of lot development.
- B.** 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. The geotechnical study indicates two to five feet of fine-grained alluvial soils (clay, silt, and fine sand) overlying coarse-grained alluvial soils (sandy gravel with cobble). Groundwater is anticipated at depths of ten to fifteen feet.
- 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, Billings Montana City Code (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. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the FEMA maps for this area. Please be advised that special development restrictions may apply within these specified areas.

- I. The lowest finished floor elevation (which includes the garage) shall be a minimum of 18-inches higher than the top of curb measured from the highest location along the lot frontage. Higher finished floor elevations shall be required on a lot by lot basis, as noted on the final plat.

### 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 Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.

*Rights-of-way widths.* The internal subdivision street will have a 56-foot right-of-way. The existing half right-of-way width along Hawthorne Lane adjacent to the subdivision is 40 feet, for a total right-of-way width of 80 feet on Hawthorne Lane. This width is adequate and fulfills the required dedication for a collector street type as outlined in the subdivision regulations.

*Pavement widths and surface types.* All streets shall be built to grade with a satisfactory engineered subbase, base course, and asphalt surface and include concrete curb and gutter. The internal subdivision street will be 34-foot-wide back-to-back curb public street. Hawthorne Lane shall be a 45-foot wide back-to-back curb public street with curb and gutter installed on the East side of the street directly adjacent to the subdivision. The engineered design cross-sections of said streets shall be submitted to the City of Billings Engineering Division.

The internal subdivision street is proposed to be public and future maintenance of the street improvements shall be the responsibility of the City of Billings.

#### B. Sidewalks

City and Subdivider agree that developer will install handicap accessibility ramps at time of private contract construction. Individual lot owners will be responsible for the construction of the five-foot wide boulevard sidewalks adjacent to their lot at the time of lot construction. The sidewalks along the right-of-way frontage on Hawthorne Lane, and along the right-of-way frontage of the internal subdivision street for Block 2 Lot 1, shall be 5-foot boulevard sidewalk to be constructed with the private contract for this subdivision.

#### C. Street Lighting

Construction or installation of street lights within the public rights-of-way shall not be required at this time. If street lights are installed, a maintenance district will be formed for future maintenance of the street lights.

#### **D. Traffic Control Devices**

The Subdivider shall furnish and install all necessary traffic control devices adjacent to the subdivision. Traffic control devices shall include all necessary signing, striping, and channelization devices to properly complete the implementation of the proposed street construction. All traffic control devices shall be subject to review and approval by the City Engineering Division.

Street name signs for streets within the subdivision shall be furnished and installed in accordance with the current City of Billings Public Works standards at the time of construction.

The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual on Uniform Traffic Control Devices.

#### **E. Access**

Access to the site shall include two (2) new full street accesses from Hawthorne Lane for the internal looped street. Location of these accesses shall be subject to review and approval by the City Engineering Division.

#### **F. Billings Area Bikeway and Trail Master Plan**

The subdivision is included in the Billings Area Bikeway and Trail Master Plan. Hawthorne Lane is identified with short range bike lanes. Sufficient right-of-way is dedicated with the existing public right-of-way along Hawthorne Lane to allow for bike lane installations. No improvements are required or proposed at this time.

#### **G. Public Transit**

No improvements with regard to public transit are anticipated at this time.

### **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.

Access is provided to this subdivision from Hawthorne Lane in the form of a looped internal road within the subdivision. Fire hydrants will be installed at the required locations as reviewed and approved by the City of Billings Fire Department.

#### **V. STORM DRAINAGE**

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. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

The developer will construct one detention basin along the western boundary of the subdivision on Lot 1, Block 2. A stormwater detention easement for the benefit of the City will be recorded at the time of final plat recording. The stormwater detention facility will have an outlet to Hawthorne Lane and be allowed to directly discharge to the City storm drain in Hawthorne Lane.

The developer will create an easement over and across a portion of Lot 3, Block 1 of Founders Park Subdivision, as shown and described on said plat as "NEW 12' STORM DRAIN EASEMENT". The Owners do hereby create this easement for the purpose of constructing, reconstructing, maintaining, operating, repairing, improving, replacing and using storm drainage facilities and all necessary fixtures and appurtenances through, over, and across said real property together with the right of free ingress and egress at all times by designated representatives of the City for reasons related thereto. No fences, trees, structures, or other permanent improvements may be constructed within the easement area.

This easement is created for the benefit of the City of Billings, shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, executors, successors, administrators and assignees, and shall bind said parties thereof.

A stormwater drainage and grading plan was submitted to the City of Billings and approved for the subdivision, including the stormwater pond, berm, and overlot grading. Due to cost considerations, the overlot grading and berm were not installed during the initial private contract for the subdivision. Overlot grading shall be the

responsibility of each lot owner at the time of individual building permit issuance to grade their lot per the approved plan. The pond berm installation shall be constructed at the time of construction of either Lot 2 or Lot 7 of Block 2, whichever occurs last.

## **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 sanitary sewers to the Public Works Department – Engineering Division and extension/connection of water mains to the County Water District of Billings Heights. 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, County Water District of Billings Heights, Fire Department and the Montana Department of Environmental Quality.

### **A. Water**

The subdivision will be served by making a connection to an existing water main located in Hawthorne Lane. The existing water main in this street is an 8-inch diameter main and is a part of the County Water District of Billings Heights water distribution system. A new looped 8-inch water main will be installed in the local interior street. Fire hydrants will be provided at appropriate locations and will be subject to approval by the City of Billings Fire Department. Appropriately sized services will be provided to the individual lots within the subdivision. Each lot shall be provided with its own separate water service. Extension of the water service from the property line to each building within the subdivision lots will occur at the time of lot development. All water construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the County Water District of Billings Heights and Montana Department of Environmental Quality.

## **B. Sanitary Sewer**

Sanitary sewer for the subdivision will be provided through a connection to a public sanitary sewer system. The sanitary sewer located within the subdivision will consist of a low-pressure sanitary sewer main (sized at 2-inch and 3-inch diameter). Appropriately sized mains and services in the internal streets will provide service to the individual lots within 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. Extension of the sewer service to each building within the subdivision lots will occur at the time of lot development.

The individual sewage ejector pumps installed on each lot shall be E-One model DH151/DR151 or a similar model.

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

All telephone, gas, electrical power, and cable television lines shall be placed in designated easements outside of the right-of-way, where possible, and shall be installed underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.

## **VII. PARKS/OPEN SPACE**

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Additionally, Section 23-1002.B.1 of the City of Billings municipal code covers parkland dedication of major subdivisions. The Subdivider will make a cash in-lieu contribution for the 0.395 acres in lieu of parkland dedication.

## **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. 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.

**X. 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.

**XI. 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.



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: \_\_\_\_\_

**Waiver of Right to Protest**  
**FUTURE SPECIAL IMPROVEMENT DISTRICTS**

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.

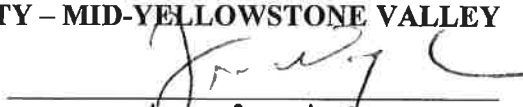
This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the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

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

*Founders Park Subdivision*

Signed and dated this 14<sup>th</sup> day of August, 2019.

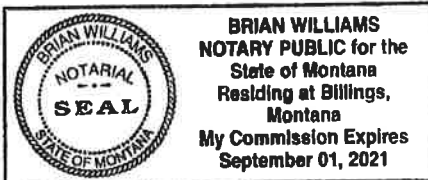
**HABITAT FOR HUMANITY – MID-YELLOWSTONE VALLEY**

  
\_\_\_\_\_  
Executive Director

STATE OF MONTANA )

County of Yellowstone )

On this 14<sup>th</sup> day of August, 2019, before me, a Notary Public in and for the State of Montana, personally appeared Jim Woolyhand, known to me to be **HABITAT FOR HUMANITY – MID-YELLOWSTONE VALLEY**, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.



Notary Public in and for the State of Montana

Printed Name: Brian Williams

Residing at: 2000 Overland Ave Billings, MT

My commission expires: 9-1-21