

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
FOUNDERS PARK SUBDIVISION  
CITY OF BILLINGS  
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## **SUBDIVISION IMPROVEMENTS AGREEMENT 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 1617 1st Avenue North, Billings, Montana 59101, hereinafter referred to as "Subdivider," 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 Board of Planning recommended conditional approval of a preliminary plat of Founders Park Subdivision; and

**WHEREAS**, at a regular meeting conducted on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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. CONDITIONS THAT RUN WITH THE LAND**

- 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 wildlife 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.
- 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.** Each owner of a completed lot shall be a member of the Founders Park Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of a lot. The Homeowners Association will be set up to maintain the permanent stormwater detention facility. The HOA Board of Directors shall have the power, in its discretion, to exclude costs

of major repairs or approved capital improvements to the HOA Storm Water System from the regular monthly assessments and, instead, impose special assessments for these expenses, and for emergencies, as they are incurred.

- G. 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 sidewalk along the right-of-way frontage on Hawthorne Lane 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 (BABTMP)**

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 SERVICES**

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.

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.
- 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 affect the current minimum subdivision requirements for fire apparatus access and water supply.

**V. STORM DRAINAGE**

All storm drainage improvements shall comply with the provisions of Chapter 28, BMCC, and shall be in accordance with the recommendations of an approved storm drain study to be submitted to the City of Billings Engineering Division by the Subdivider. The stormwater in the subdivision will be managed on-site through surface flow on the streets, inlets, piping, and a stormwater detention facility. The stormwater design for the subdivision will conform to the current City of Billings Stormwater Management Manual and be reviewed by the City of Billings Public Works Department.

The developer will construct one detention basin along the western boundary of the subdivision on Lot 1, Block 2. The detention facility will be located on a Home Owner's Association (HOA) owned lot and shall be operated and maintained by the HOA. 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.

## **VI. UTILITIES**

Water and sanitary sewer lines shall be sized and installed in conformance with the design standards and specifications, and the rules and regulations of the City of Billings (sanitary sewer) and County Water District of Billings Heights (water).

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/to water mains and sanitary sewers to the County Water District of Billings Heights and the Public Works Department, Engineering Division. The extension/connection of/to water mains and sanitary sewers are 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 fees and charges 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 and regulations of, and as approved by the City of Billings Public Works Department, County Water District of Billings Heights, City of Billings 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. 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**

The subdivision will be served by one connection to an existing 8-inch sanitary sewer main located in Hawthorne Lane. The sanitary sewer located within the subdivision will consist of an 8-inch sanitary sewer main. 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 from the property line to the building within the lot will occur at the time of lot development.

**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 0.2497 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. HOMEOWNER'S ASSOCIATIONS**

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

*Contact Information*

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

*Stormwater Drainage Facilities*

The HOA shall be responsible for the maintenance of the on-site stormwater drainage facility located on Lot 1, Block 2.

**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 Engineering Division and Public Works Department, Collection and Distribution Division.

**XII. LEGAL PROVISIONS**

- A. Subdivider agrees to guarantee all public improvements for a period of one (1) 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 provision of the 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 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.

DRAFT



“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:

*Founders Park Subdivision*

WAIVER signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

### HABITAT FOR HUMANITY, MID-YELLOWSTONE VALLEY

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 **HABITAT FOR HUMANITY, MID-YELLOWSTONE VALLEY**, the person who executed the forgoing instrument and acknowledged to me that he/she 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: \_\_\_\_\_