

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

Essmann Subdivision

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(City of Billings)

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**SUBDIVISION IMPROVEMENTS AGREEMENT
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DISTRICTS**

Essmann Subdivision

This agreement is made and entered into this 21st day of JANUARY, 2020, by and between *No Cash Water, LLC*, whose address for the purpose of this agreement is **PO Box 80945, Billings, MT 59108**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Essmann Subdivision*, located in the City of Billings, Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning as an expedited plat which was deemed to not require preliminary review; 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 *Essmann 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 have been requested.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

- A. Lot owners will not be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. Sidewalks are guaranteed through the Waiver that is attached.
- 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 report that was completed for the site calls for conventional spread and continuous footings and over-excavation and replacement with structural fill.
- D. No water rights have been transferred to the lot 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 must be 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, Section 28-201, 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.

III. TRANSPORTATION

A. Streets

Future street improvements to Santiago Boulevard include Curb and Gutter, Sidewalks, Street Widening, etc. No street improvements are required at this time, however, a Waiver is attached to provide for future streets.

B. Sidewalks

Future Sidewalks shall be 5' wide with a 5' wide boulevard. No sidewalk improvements are required at this time, however, a Waiver is attached to provide for future sidewalks.

C. Street Lighting

No street lighting improvements are required at this time, however, a Waiver is attached to provide for future street lighting.

D. Traffic Control Devices

No traffic control devices are required at this time, however, a Waiver is attached to provide for future traffic control devices.

E. Access

The subdivision has access to MT Highway No. 416 (Blue Creek Road) and to Santiago Boulevard.

F. Billings Area Bikeway and Trail Master Plan

The subdivision is adjacent to an arterial bike route, no improvements are required at this time.

G. Public Transit

No bus stops exist or are planned in this subdivision. Bus stops exist north of the 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.

An operational fire hydrant is located at the intersection of MT Highway No. 416 and Santiago Boulevard.

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.

There are existing storm drain facilities onsite for the existing building. A storm drain inlet and new curb and gutter shall be placed along the eastern boundary of Lot 1.

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 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

Lot 1 has a 1” water service stubbed near the North property line of Santiago Boulevard. Lot 2 has two existing 2” water services constructed to the existing building.

B. Sanitary Sewer

Sewer service has been stubbed to Lot 1. Lot 2 has no sewer service. If a sewer service is ever needed for Lot 2, installation of that service will be the responsibility of the lot owner.

C. Power, Telephone, Gas, and Cable Television

All private utilities have been installed to services the subdivision. Existing utility easements have been shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Essmann Subdivision, as this is a minor subdivision [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

There are no irrigation facilities adjacent to the subdivision.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical study was completed for the subdivision. The geotechnical report that was completed for the site calls for conventional spread and continuous footings and over-excavation and replacement with structural fill.

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.

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

“SUBDIVIDER”

No Cash Water, LLC

Scott Heard

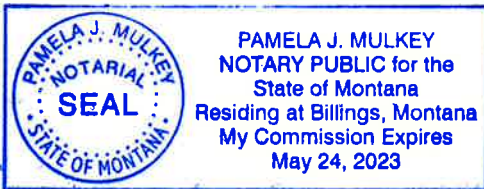
By: Scott Heard

Authorized Representative

Its:

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this 21st day of January, 2020, before me, a Notary Public in and for the State of Montana, personally appeared Scott Heard, as Authorized Representative of No Cash Water, LLC, known to me to be the one who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Pamela J. Mulkey
Notary Public in and for the State of Montana
Printed Name: Pamela J. Mulkey
Residing at: Billings, MT
My commission expires: 5/24/23

This agreement is hereby approved and accepted by the City of Billings, this ___ day of _____, 2020.

