

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT  
DISTRICTS  
MK Subdivision, 2<sup>nd</sup> Filing  
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City of Billings**

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

**MK Subdivision, 2<sup>nd</sup> Filing**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Arrowhead Investment Corp.* whose address for the purpose of this agreement is 115 North Broadway, Suite 200; Billings, MT 59101, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

**WITNESSETH:**

**WHEREAS**, the plat of *MK Subdivision, 2<sup>nd</sup> Filing*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of *MK Subdivision, 2<sup>nd</sup> 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 *MK Subdivision, 2<sup>nd</sup> 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**

1. No variances are being requested by the Subdivider.

**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.** 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 may need to protect young 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. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction
- D. No water shares have been transferred to the individual 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 (SID) 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 a Stormwater Pollution and Prevention Plan (SWPPP) may be required to be 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.

### **III. TRANSPORTATION**

#### **A. Streets**

- Hawk Creek Avenue and Chy Way are private roads constructed within a 40-foot public right-of-way easement.
- Hawk Creek Avenue and Chy Way are constructed to a width of 36-foot back-of-curb to back-of-curb.

- No other off-site street improvements will be required by the Subdivider.

**B. Sidewalks**

- Individual lot owners will be responsible for the construction of the sidewalks along the private roads adjacent to their lot at the time of lot development and shall be included in each building permit. Sidewalks shall meet code requirements at the time of development.

**C. Street Lighting**

- No street lighting is proposed for the development; however street lighting is included in the waiver of right to protest.

**D. Traffic Control Devices**

- No traffic signals are required within this subdivision.
- Subdivider has completed an update to the original MK Subdivision traffic impact study (TIS) for Lot 4, Block 1 of the parent subdivision. Based on the updated TIS, Subdivider shall pay intersection impact contributions.
- Subdivider agrees to give a cash contribution for improvements prior to any building permit approvals. Cash contributions shall be paid by lot owners at the time of development before any building permits are issued. City and Subdivider agree that said improvement cash contributions will be distributed as follows:
  - Lot 1: \$11,201.62
  - Lot 2: \$11,212.27
  - Lot 3: \$16,227.45

**E. Access**

- Driveway access to Lot 1 will be off Hawk Creek Avenue
- Driveway access to Lot 2 will be off either Hawk Creek Avenue or Chy Way
- Driveway access to Lot 3 will be off Hawk Creek Avenue

**F. Billings Area Bikeway and Trails Master Plan (BABTMP)**

- This subdivision is located within the jurisdictional area of the BABTMP. There is a proposed long-range bike lane along the north side of the subdivision. Subdivider is responsible for installation of the trail in the 25-foot landscape easement located along the north side of the proposed subdivision.

## **G. Public Transit**

- This subdivision does not require improvements to ensure public transit service. There are no bus stops in the vicinity of the subdivision.

## **IV. EMERGENCY SERVICES**

The Billings Fire Department currently provides fire protection services for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet 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.
- 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 apparatus access and water supply.

## **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. Each lot will be required to submit a complete stormwater management plan to the City 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 City of

Billings Public Works Department – Engineering Division. The extension of/connection to water mains and sanitary sewers is subject to the approval conditions of the applications. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any 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 or when a building permit is issued for new construction.

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 subdivision will be served by an existing 8-inch water main located in Hawk Creek Avenue and Chy Way. Lot 1 will connect to the water main located in Hawk Creek Avenue and will be constructed by the individual lot owner at the time of development. Lots 2 and 3 will connect to the existing service stub outs along Hawk Creek Avenue.

**B. Sanitary Sewer**

The subdivision will be served by an existing 8-inch sewer main located in Hawk Creek Avenue and Chy Way. Lot 1 will connect to the sewer main located in Hawk Creek Avenue and will be constructed by the individual lot owner at the time of development. Lots 2 and 3 will connect to the existing service stub outs along Hawk Creek Avenue.

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

Private utility facilities currently exist to serve the subdivision. Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

**VII. PARKS/OPEN SPACE**

There is no parkland requirement for proposed *MK Subdivision, 2<sup>nd</sup> Filing*, as this is a minor subdivision [MCA 76-3-621(3)(e)].

**VIII. IRRIGATION**

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 unless otherwise noted herein.

**IX. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study has been performed for the subdivision. The reported dated May 21, 2019 is available for review at the City of Billings Engineering Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

**X. PHASING IMPROVEMENTS**

There are no intended phasing improvements.

**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 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”

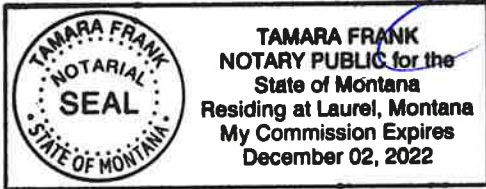
Arrowhead Investment Corp.

By: Tyler Schmechel

Title: Representative

STATE OF MONTANA )  
 : SS  
County of Yellowstone )

On this 6 day of February, 2020 before me, a Notary Public in and for the State of Montana, personally appeared Tyler Schmechel, known to me to be the Representative of Arrowhead Investment Corp., who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Tamara Frank  
Notary Public in and for the State of Montana  
Printed Name: TAMARA FRANK  
Residing at: Laurel, MT  
My commission expires: 12-02-2020



# 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:

*MK Subdivision, 2<sup>nd</sup> Filing*

Signed and dated this 6<sup>th</sup> day of February, 2020.

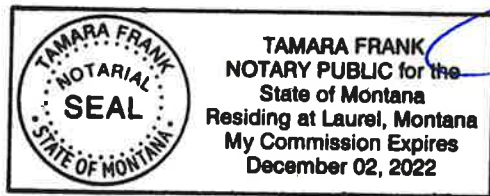
Arrowhead Investment Corp.

By: *[Signature]*

Title: Representative

STATE OF MONTANA     )  
  : ss  
County of Yellowstone     )

On this 6 day of February, 2020 before me, a Notary Public in and for the State of Montana, personally appeared Tyler Schmechel, known to me to be the Representative of Arrowhead Investment Corp., who executed the foregoing instrument and acknowledged to me that he/she executed the same.



*[Signature]*  
Notary Public in and for the State of Montana  
Printed Name: TAMARA FRANK  
Residing at: Laurel, MT  
My commission expires: 12-02-2020