

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

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
ANNAFELD NORTH SUBDIVISION, FIRST FILING
CITY OF BILLINGS
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ANNAFELD NORTH SUBDIVISION, FIRST FILING**

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between **MCCALL DEVELOPMENT, INC.**, whose address for the purpose of this agreement is 1536 MULLOWNEY LANE, SUITE 100; BILLINGS, MONTANA 59101, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the plat of Annafeld North Subdivision, First Filing located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on the __ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld North Subdivision, First Filing; and

WHEREAS, at a regular meeting conducted on the __ day of _____, 20__, the City Council conditionally approved a preliminary plat of Annafeld North Subdivision, First Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat; and

WHEREAS, a Development Agreement between the Subdivider and the City is of record in the office of the Clerk and Recorder, under Document No. _____; and

WHEREAS, the provisions of this agreement shall be effective and applicable to Annafeld North Subdivision, First 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

None requested

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.** 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.
- C.** Lot owners should be aware that this subdivision is built with a “traditional neighborhood” design. The dwellings will have the garage set in the rear of the lots. The access will be provided to the garages by means of a paved alley.
- D.** Lot owners should be aware that this subdivision is adjacent to wildlife habitat. Consequently, owners are advised that wildlife indigenous to the area is found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also 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. Any impacts associated with wildlife and any damage arising there from is the responsibility of the lot owners.

- E.** No water rights have been transferred to the individual lot owners but may be held by the Subdivider and/or the homeowners association. 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 without the permission of the controlling ditch company.
- F.** Lot owners should be aware they may be required to participate in a park maintenance district administered by the homeowners association for Annafeld North Subdivision, First Filing.
- G.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Chapter 28-201, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- H.** Lot owners should be aware that Hogan's Slough adjacent to the subdivision is a major stormwater outfall for Billings west end. There is a possibility that the slough could overtop during a major storm event. Based upon the existing topography near Hogan's Slough and the Elysian Road Bridge, it is anticipated that the channel would overtop northeast of Elysian Road and flow east prior to overtopping Elysian Road. There is the possibility however that Elysian Road could be overtopped during a major storm event. If that occurs, flows not carried within the Hogan's Slough channel would be carried within the subdivision streets. The elevation of residential dwellings and commercial structures must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm. Higher house finished floor elevations may be required on a lot by lot basis.
- I.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater Management Manual*.

III. TRANSPORTATION

A. Streets

1. All internal access roads and site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets within the subdivision shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All public roads will be built to provide a 34-foot back-to-back curb street width. The design cross-sections of said streets shall be submitted to, and approved by, the City of Billings Public Works Department. The street improvements will be completed by private contract or SID.
3. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter will be constructed on the north side of Elysian Road adjacent to the First Filing, excluding the large lot for future 2nd Filing (Lot 5, Block 3). Improvements will also include the construction of necessary pavement widening to construct westbound travel lane, center turn lane/center median and parking lane adjacent the subdivision. A full access will be provided at Walter Creek Boulevard and Elysian Road. A restricted right in right out access with a center median will be provided at St. George Boulevard and Elysian Road. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. The design cross-section of said street shall be submitted to, and approved by, the City of Billings Public Works Department. Elysian Road improvements will be completed by private contract or SID.
4. A traffic accessibility study has been completed for the Annafeld North Subdivision, First Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld North Subdivision, First Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

Muldowney Lane/Elysian Road	2.50%	\$6,250.00
Elysian Road/East Lane	1.08%	\$2,700.00

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld North Subdivision, First Filing as submitted with the preliminary plat.

B. Alleys

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley approaches constructed with asphalt shall be replaced with concrete by the Subdivider at the time when home construction is complete. In the event asphalt approaches within the subdivision are not replaced with concrete within three years of the date of recording of the final plat, the City may construct the concrete approaches and assess the Subdivider for the costs associated with the approach construction. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the alley. In addition, no shrubs taller than two feet are allowed to be planted in alleys.

C. Sidewalks

Subdivider shall install handicap access ramps, where necessary, during street construction. Construction of sidewalks along frontage of the lots shall be installed by the lot owner at the time of lot development. Sidewalks along the street frontage shall be minimum 5-foot-wide and separated with a boulevard width not less than five feet. Developer shall construct the 5-foot-wide boulevard sidewalk adjacent to private parks (Lot 13, Block 1 and Lot 17, Block 4) at the time of private park development.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

D. Street Lighting

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for First Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting at a future date and is included in the waiver of right to protest.

E. Traffic Control Devices

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual on Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

F. Access

Access to the subdivision will be provided by Walter Creek Boulevard and St. George Boulevard. Alley access is also provided to all residential lots within the subdivision.

G. Billings Area Bikeway and Trail Master Plan

A multi-use trail has been constructed along the south boundary of Elysian Road. Said multi-use trail extends from the east boundary of the subdivision to the easterly right-of-way line of East Lane.

H. Public Transit

There are no MET Transit routes that service this subdivision at this time. The nearest established route is at the intersection of Elysian Road and Mallowney Lane. No improvements with regard to MET Transit vehicles are anticipated at this time.

IV. EMERGENCY SERVICE

A. Fire Hydrants

Emergency service will be provided by the City. Placement of fire hydrants will be as required by the City of Billings Fire Department.

B. Construction of Buildings

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 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 20-foot-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.

C. Building Location

All buildings shall be located on each lot so that the furthest portion of each building is within 150-feet from an approved fire department access road over an approved route excluding all carriage lanes and alleyways.

V. STORM DRAINAGE

Storm drainage for the public streets shall be provided by a combination of surface drainage and curbs and gutters, drained to underground storm drains, and with discharge to a new detention facility that is located within the subdivision in a

private park on Lot 13, Block 1. This detention facility has been sized to accept additional runoff generated from the future Annafeld North Subdivision, Second Filing. The detention facility on site will be sized to store the stormwater generated by Annafeld North Subdivision, First and Second Filing. Treatment for the water quality runoff will be provided in the stormwater detention facility. The stormwater detention facility will discharge to Hogan's Slough. Stormwater management facilities for the subdivision must be able to pass flows generated outside the subdivision area without inundating existing and proposed home sites. All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division prior to filing of the final plat.

The stormwater detention area is to be located within a private park lot deeded to the Annafeld North Subdivision HOA and will be an integral part of the public street drainage system. The drainage system improvements will be in accordance with the recommendations of the stormwater analysis and report prepared and submitted with the improvement plans and specifications. Maintenance of the stormwater detention area and associated drainage facilities shall be by the Annafeld North Subdivision HOA.

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 of/connection 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 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.

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 Annafeld North Subdivision water system consists of a looped water main located in each of the local streets. The subdivision water system will consist of new 8-inch water mains in Walter Creek Boulevard, St. George Boulevard, Street 1 (temporary name) and Street 2 (temporary name). A new 8-inch water main will also be installed parallel to the existing 16-inch water main Elysian Road to serve Lots 1-8, Block 1 and Lots 1-9, Block 2. A stub for future connection will be provided in Street 2 (temporary name). Future filing of Annafeld North Subdivision will provide the opportunity to make additional connections to the trunk main in Elysian Road providing water main looping.

B. Sanitary Sewer

Sanitary sewer service to Annafeld North Subdivision, First Filing will be provided by connecting to the existing 24-inch trunk sanitary sewer located in the south east corner of the subdivision. A stub for future connection will be provided in Street 2 (temporary name). 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.

C. Power, Telephone, Gas, and Cable Television

Private utility facilities currently exist to serve the subdivision. The private utility facilities will be installed within the alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

VII. PARKS/OPEN SPACE

Per Section 76-3-621 of the Montana Code Annotated, 0.533 acres of parkland dedication is required for Annafeld North Subdivision, First Filing. The parkland provided with the platting of Annafeld North Subdivision, First Filing is 0.847 acres. The excess parkland dedication will be applied to the parkland provided for Annafeld North Subdivision, Second Filing. The Subdivider proposes to dedicate land as private parks. The private parks will be maintained by the Annafeld North Subdivision Homeowners Association (HOA).

VIII. HOMEOWNER'S ASSOCIATIONS

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

A. Contact Information

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

B. Stormwater Drainage Facilities

The HOA shall be responsible for the maintenance of the mechanical filtration stormwater manholes. The HOA shall share the cost of maintenance of the community stormwater facilities.

IX. POSTAL DELIVERY

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study is being performed for the subdivision. The report dated December 2020, will be available for review at the City of Billings Planning Department. Lot owners and contractors/builders will be encouraged to review the report and its recommendations.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts 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 two years from the date of substantial completion.
- 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 run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees 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 Second above written.

“SUBDIVIDER”

MCCALL DEVELOPMENT, INC.

By: _____

Its: _____

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 _____, known to me to be the _____ of **MCCALL DEVELOPMENT, INC.** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20__.

“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: _____

**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 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:

ANNAFELD NORTH SUBDIVISION, FIRST FILING

SUBDIVIDER/OWNER

MCCALL DEVELOPMENT, INC.

By: _____

Its: _____

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the person who executed the foregoing instrument as the _____ of **MCCALL DEVELOPMENT, INC.** 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: _____