

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

Amended Lot 5, Block 1, Legacy Subdivision
Table of Contents
CITY OF BILLINGS

I.	VARIANCES	3
II.	PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS	3
III.	TRANSPORTATION	4
	Streets	4
	Sidewalks	4
	Street Lighting	4
	Traffic Control Devices	4
	Access	4
	Billings Area Bikeway and Trails Master Plan (BABTMP)	5
	Public Transit	5
IV.	EMERGENCY SERVICE	5
V.	STORM DRAINAGE	5
VI.	UTILITIES	5
	Water	6
	Sanitary Sewer	6
	Power, Telephone, Gas, and Cable Television	6
VII.	PARKS/OPEN SPACE	6
VIII.	IRRIGATION	6
IX.	SOILS/GEOTECHNICAL STUDY	7
XI.	FINANCIAL GUARANTEES	7
XII.	LEGAL PROVISIONS APPLYING TO SUBDIVIDER	7

**SUBDIVISION IMPROVEMENTS AGREEMENT
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Amended Lot 5, Block 1, Legacy Subdivision

This agreement is made and entered into this _____ day of ____, 2021, by and between Legacy LLC whose address for the purpose of this agreement is **P.O. Box 470; Hays, Montana 595270**, 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 ____ day of ____, 2020, the City Council conditionally approved a preliminary plat of Amended Lot 5, Block 1, Legacy 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 Amended Plat of Legacy 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

A. No variances are being requested for this subdivision.

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 soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil survey and Geotechnical Engineering Report for Legacy Subdivision, prepared by Rimrock Engineering, Inc. (February 22, 2019), indicate that there could be potential limitations for proposed construction on the lots. Refer to Section IX for discussion of the geotechnical study completed for some of the lots within the Subdivision. All permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.
- C. 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.
- D. There is attached hereto a Waiver waiving the right to protest the creation of the special improvements district 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.
- E. 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 Association with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.
- F. 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

Streets

- Rights-of-way width of 60 feet for Dovetail Avenue and 80 feet for 52nd Street West have already been dedicated in previous filings.
- The Owner shall construct public streets, and curb & gutter within the Subdivision. Dovetail Avenue fronting lots within the Subdivision shall be constructed as 40' back of curb to back of curb and 52nd Street West fronting lots within the Subdivision shall be constructed as 32' back of curb to edge of pavement. These access roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance, and city subdivision regulations.
- The construction costs have been funded and no additional monetary security is required.

Sidewalks

- The Owner will install corner intersection handicap ramps.
- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit.
- Sidewalks shall be 5-foot wide with a 10-foot boulevard planting strip between the sidewalk and the curb along 52nd Street West frontage of those lots included in the subdivision. Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb along Dovetail Avenue frontage of those lots included in the subdivision.

Street Lighting

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

Traffic Control Devices

- Traffic control devices are not required for this subdivision but are included in the waiver of right to protest.
- The Owner will furnish and install street name signs for streets within the subdivision or located immediately adjacent thereto in accordance with the specifications of the City of Billings Public Works and Fire Departments.

Access

- Access to the lots will be from drive approaches installed at the time of lot development from streets built with this Subdivision. Access permits shall be obtained from City Engineering.

Billings Area Bikeway and Trails Master Plan (BABTMP)

- This subdivision is located within the jurisdiction of the BABTMP, but no trail corridors are identified within this subdivision area.

Public Transit

- This subdivision does not require improvements to ensure public transit service. The nearest transit stop is at the intersection of Grand Avenue and Shiloh Road.

IV. EMERGENCY SERVICE

The Billings Fire Department currently provides fire protection 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 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. A master plan is in place for Legacy Subdivision and all Future stormwater improvements will be reviewed and approved by the Engineering Division to comply with said plan. The new storm drainage improvements shall be constructed as part of Private Contract P-752. The construction costs have been funded through the Private Contract P-752 and no additional monetary security is required.

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 – Distribution and Collection Division, respectively. 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 appropriate water and wastewater construction fees in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

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.

Water

The Private Contract P-752 will install new 12-inch water main along the length of 52nd Street West and new 8-inch main along the length of Dovetail Avenue through the subdivision. New water services will be installed for all lots in the subdivision.

Sanitary Sewer

The Private Contract P-752 will install new 8" sanitary sewer main along the length of Dovetail Avenue. New sewer services will also be installed for all lots in the subdivision. A 10' wide sewer service easement along the west line of Lot 5A will be dedicated for the benefit of Lot 5B.

Power, Telephone, Gas, and Cable Television

Private utility facilities (power, natural gas, telephone, and cable) will be installed during construction and located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for this subdivision as the parkland requirement has been previously met.

VIII. IRRIGATION

No irrigation ditch, field laterals, or irrigation easements exist in this subdivision.

IX. SOILS/GEOTECHNICAL STUDY

According to the Geotechnical Engineering Report for Legacy Subdivision, prepared by Rimrock Engineering, Inc. (February 22, 2019), the subsurface profile generally consists of varying layers of medium stiff to stiff lean clay and sandy silt and loose silty and clayey sand soils. Groundwater was encountered approximate depths ranging from 13 to 15.5 feet while drilling or for the short duration the borings were allowed to remain open. Clay and silt soils are typically poor materials.

Subsurface conditions vary from one location to another and the structural characteristics may vary from one structure to another. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

X. PHASING OF IMPROVEMENTS

There are no intended phasing improvements.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements through Private Contract P-752. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district and the improvements shall be installed as approved by the City Engineer and the City of Billings Public Works.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A. Subdivider and successors and assigns agrees to guarantee all public improvements for a period of two years 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 run with the land and apply to and shall be binding on the heirs, personal representatives, successors and 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 first above written.

“SUBDIVIDER”

Legacy, LLC

By: _____

Title: _____

STATE OF MONTANA)

: ss

County of Yellowstone)

On this ___ day of _____, 2021, before me, a Notary Public in and for the State of Montana, personally appeared _____, a Member Representative for Legacy, LLC, known to me to be the person 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 _____, 2021.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)

: ss

County of Yellowstone)

On this _____ day of _____, 2021, 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:
Amended Lot 5, Block 1, Legacy Subdivision

Signed and dated this ____ day of _____, 2021.

Legacy, LLC

By: _____

Title: _____

STATE OF MONTANA)

: ss

County of Yellowstone)

On this ___ day of _____, 2021, before me, a Notary Public in and for the State of Montana, personally appeared _____, Member Representative for Legacy, LLC, known to me to be 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: _____