

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

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL
IMPROVEMENT DISTRICTS
ANNAFELD SUBDIVISION, FOURTH FILING
CITY OF BILLINGS
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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 Mallowney 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 Subdivision, Fourth 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 Subdivision, Fourth Filing; and

WHEREAS, at a regular meeting conducted on the ____ day of _____20__, the City Council conditionally approved a preliminary plat of Annafeld Subdivision, Fourth 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 Annafeld Subdivision, Fourth 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. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.
- 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 single-family 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 Carriage Lane.
- D.** Lot owners should be aware that this subdivision is zoned “Planned Development” (PD). Special zoning regulations regarding lot development will be enforced in accordance to the Amended Planned Development Agreement recorded at the Yellowstone County Clerk and Records Office under Document No. 3826023.
- E.** 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. Any impacts associated with wildlife and any damage arising there from is the responsibility of the lot owners.

- F.** 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.
- G.** Lot owners should be aware they may be required to participate in a park maintenance district administered by the homeowners association for Annafeld Subdivision, Fourth Filing.
- H.** 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*.
- I.** Lot owners should be aware that the Yellowstone River Channel Migration Study sponsored by the Yellowstone River Conservation District Council and the U.S. Army Corp of Engineers has identified areas which may be susceptible to erosion by the Yellowstone River. Owners are encouraged to review the extent to which bank erosion may pose a threat to structures built in this subdivision.
- J.** 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.

- K.** 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. At the time of this Filing, Phase IV of Harmony Meadows Subdivision, Second Filing has not been constructed. Therefore, a physical connection between Annafeld Subdivision and Harmony Meadows Subdivision cannot be made. Furthermore, even if the Story Road connection were constructed, the traffic generated from Annafeld Subdivision, Fourth Filing would be unlikely to utilize Story Road based on proximity to Elysian Road and the land uses that are currently in Harmony Meadows Subdivision. Therefore, a detailed traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision is not required for this Filing of Annafeld Subdivision. A traffic impact analysis of the Story Road connection to Harmony Meadows Subdivision is required with future filings.

The Subdivider agrees to contribute up to 50 percent of the cost for design, permitting, and construction of the Hogan's Slough crossing on Story Road. If the cash contribution is not sufficient to cover 50

percent of the crossing costs at the time of construction, the City retains the right to create a SID to recover additional design and construction costs.

The timing of the contribution for the Hogan's Slough crossing on Story Road shall be made at the earlier of the following:

- I. At the time an Annafeld Subdivision Traffic Impact Study recommends the Story Road connection be completed.
 - II. At the commencement of construction of Phase IV improvements for Harmony Meadows Subdivision, 2nd Filing.
 - III. Prior to final plat approval of the final filing of Annafeld Subdivision.
4. A traffic accessibility study has been completed for the Annafeld Subdivision, Fourth 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 Subdivision, Fourth Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

S. Frontage Rd/Midland Road & Mullooney Ln	2.08%	\$5,200.00
Mullooney Lane & Elysian Road	3.33%	\$8,325.00
Elysian Road & East Lane	0.83%	\$2,075.00

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 Subdivision, Fourth Filing as submitted with the preliminary plat.

B. Carriage Lanes

All Carriage Lanes within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All Carriage Lane 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. Carriage

Lane pavement widths shall be 12-feet. The design cross-sections of said Carriage Lanes shall be submitted to, and approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the Carriage Lane. In addition, no shrubs taller than two feet are allowed to be planted in Carriage Lanes.

C. Sidewalks

Subdivider shall install handicap access ramps, where necessary. 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 (east side of Lot 16, Block 18; north/south/east/west sides of Lot 1, Block 25; north side of Lot 16, Block 16) at the time of private park development.

D. Street Lighting

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for Fourth 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 of Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

F. Access

Access to the subdivision will be provided by St. George Boulevard, Farmstead Avenue, Eva Marie Lane, Norma Jean Lane, and Johannis

Meadow Lane. Carriage Lane 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 shall extend from the east boundary of the subdivision to the easterly right-of-way line of East Lane.

In addition, a 10-foot-wide multi-use path will be provided on the north side of Street 2. No additional trail improvement will be required as part of this subdivision.

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.

V. STORM DRAINAGE

- A.** A stormwater management plan shall be submitted to the Engineering Division prior to final plat approval. The storm drainage system for Annafeld Subdivision, Fourth Filing will consist of a curb and gutter surface collection and curb inlets that drain into storm drainage piping, as well as surface conveyance. The storm drain piping will discharge into existing storm drain piping and to an existing mechanical stormwater filtration manhole, then into Hogan’s Slough. All drainage improvements shall comply with the provisions of the City of Billings *Stormwater Management Manual* and Chapter 28, BMCC.
- B.** The mechanical stormwater filtration manholes are existing, and associated improvements are privately owned and maintained by the HOA. Annafeld Subdivision, Fourth Filing will be included in the HOA that is responsible to maintain these facilities. O&M requirements and HOA maintenance and fiscal responsibilities have been outlined within the Annafeld Subdivision, First Filing I O&M Manual.
- C.** 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.

- D.** 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, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- E.** 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*.

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 Subdivision water system consists of a series of looped water mains located in each of the local streets. The subdivision water system will

consist of new 12-inch water mains in Norma Jean and in a portion of Street 4. 8-inch water mains will be installed in the remaining streets in Annafeld Subdivision, Fourth Filing. Future filings of the Annafeld Planned Development 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 Subdivision, Fourth Filing will be provided by connecting to the existing 8-inch gravity sewer main located in Street 2, Eva Marie Lane, Norma Jean Lane, and Johanns Meadow Lane. 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 Carriage Lane right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the Carriage Lanes.

VII. PARKS/OPEN SPACE

The subdivision lies within a planned unit development that provides for land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development, per 76-3-621(6)(a) of the Montana Code Annotated. The park and open space within the Annafeld Planned Unit Development Master Plan meets or exceeds the area of dedication required under section 76-3-621(1), MCA. The Subdivider and City agree that the parkland dedication has been met through the dedication of private park area within Annafeld Subdivision, Fourth Filing and with additional public and private park dedication with Annafeld Subdivision, First, Second and Third Filings.

In addition, the lots within Annafeld Subdivision, Fourth Filing may provide additional funding to complete the park improvements for the previously created public parkland SID. The park improvements shall be in accordance with the City Council approved Annafeld Parks Master Plan. The Subdivider shall prepare all SID documents necessary for creation, and coordinate with the City of Billings Parks and Recreation Department for review and approval. If all park

improvements as defined in the Annafeld Parks Master Plan have been completed prior to the creation of this park SID, then this park SID will no longer be required.

The current park maintenance district (PMD 4041) for Annafeld Subdivision, First Filing shall be expanded to include lots with Annafeld Subdivision, Fourth Filing for the perpetual maintenance of the public parkland. The Subdivider shall prepare all park maintenance district documents necessary for its expansion and coordinate with the City of Billings Parks and Recreation Department for review and approval.

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 has been performed for the subdivision. The report dated _____, is available for review at the City of Billings Planning Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations.

XI. PHASING OF IMPROVEMENTS

Phasing is not being proposed with this subdivision.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install, and construct said required improvements by SID or by private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender or by SID. 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.

XIII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

- A.** Subdivider 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, 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.

