

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
Buffalo Crossing Subdivision  
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(City of Billings)**

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

**Buffalo Crossing Subdivision**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Buffalo Crossing, LLC* whose address for the purpose of this agreement is **353 Old Hays Road, Hays, MT 59527**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of Buffalo Crossing Subdivision (the Subdivision), 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 Board of Planning recommended conditional approval of a preliminary plat of *Buffalo Crossing Subdivision*; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of *Buffalo Crossing 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 Buffalo Crossing 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**

Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City’s Subdivision Regulations (Section 23.1101, BMCC):

1. No variances 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.** 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.
- D.** No water rights have been transferred to the 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 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 is 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, 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.
- H. Due to the potential flood waters from the Cove Creek Drainage, the main finish floor of each house is recommended to be a minimum of 18 inches above the top of curb elevation in the front of each lot.
- I. The development is within the flood hazard zone as identified in the 2007 Planning Department Flood Study prepared by the City of Billings. Subdivider shall include consideration of this flood study within Stormwater Report and provide design considerations to direct flows to adjacent drains.

### **III. TRANSPORTATION**

#### **A. Streets**

##### *1. Street Construction*

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, the Uniform Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.

Subdivider and City agree that the required street improvements are as follows:

- Grand Avenue, Little River Loop, Buffalo Crossing Drive, Snake Butte Way, White Clay Drive, and Stockman Avenue shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. The design section of said streets shall be submitted to, and approved by, the City Engineer.
- According to the *2014 Billings Urban Area Long Range Transportation Plan Functional Classification Map*, Grand Avenue is classified as a principal arterial. The Subdivider and City agree that the development of Buffalo Crossing Subdivision will require improvements to the Grand Avenue right-of-way to include widening of the asphalt for a westbound left turn lane at the intersection with 60<sup>th</sup> Street West, curb and gutter on the south side of Grand Avenue a along the Subdivision frontage, and a 10-foot-wide pedestrian trail along the south side of Grand Avenue adjacent to the Subdivision. The improvement plans and specifications will be approved by the City Engineer and be in accordance with the City fo Billings requirements.
- A traffic impact study has been completed for Buffalo Crossing Subdivision. All required intersection improvement contributions

identified therein shall be completed by the Subdivider at the Subdivider's expense. The percent of traffic contributions to the following intersections shall be in accordance with the traffic accessibility study. The cash contributions shall be based on the percent of traffic contributions to the intersections based on the total cost of an intersection as determined by City Engineering for the year in which the contribution is made. These costs shall be submitted at the time of final platting of the Subdivision.

Intersection	Impacted Percentage
60th Street West & Grand Avenue	5.42%
56th Street West & Grand Avenue	5.08%
54th Street West & Grand Avenue	4.04%
48th Street West & Grand Avenue	3.17%

## 2. Roads and Access

The Subdivider Tract will be accessed from one proposed approach along Grand Avenue and a street connection to Stockman Avenue to the east. The approach shall meet current city codes and regulations. Stockman Avenue shall be constructed and extended across the entire width of Subdivider Tract from COS 3653 Parcel 2A to Trails West Subdivision, to provide a connection to the property to the southwest per the City of Billings Functional Classification Map proposed future alignment. A future development access connection will be provided to the property to the west.

Subdivider agrees that prior to final platting of Phase II, a crossing shall be constructed for the Birely Drain for Stockman Avenue connecting to the Trails West Subdivision. The Subdivider will complete this crossing through one of the following options: participation in an SID, private participation with the adjacent Trails West Subdivision, or through construction of 50% of the Birely Drain crossing. Construction of 50% of the crossing would include installation of the culvert, headwalls, wingwalls, gravel surfacing, and water main within the Birely Drain easement area. Subdivider agrees that this crossing is to be constructed prior to release of Phase II. The Subdivider will acquire an easement and construct an access road connection within the future Trails West Subdivision 6<sup>th</sup> Filing, if that Subdivision has not commenced construction within the right-of-way by the time of final platting of the Subdivision. If physical and legal access cannot be connected from Buffalo Crossing Subdivision to a roadway within Trails West Subdivision at the time of final platting, only Phase I of the Subdivision will be completed until such time that the secondary access is available.

The Subdivider agrees to complete the design, permitting, and construction of a culvert of sufficient length for a 39-foot back of curb to back of curb street plus 7-foot curb walks and 8-inch water main at the Birely Drain and Stockman Avenue crossing along the southern boundary of the Buffalo Crossing Subdivision. Said improvements shall extend to the southern edge of the constructed Birely Drain ditch. Improvements will not be extended beyond this point as it is being actively farmed. This construction will be considered 50% contribution for this crossing and no reimbursement or cash in lieu is required by the development.

### *3. Rights-of-way*

Public Right-of-Way will be dedicated to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan and in accordance with the City of Billings Subdivision Regulations. Subdivider shall dedicate a 60-foot-wide half right-of-way along Grand Avenue, a 74-foot-wide right-of-way for Stockman Avenue, and 56-foot-wide rights-of-way for Little River Loop, Buffalo Crossing Drive, Snake Butte Way, White Clay Drive.

### *4. Street Construction, Widening, Multi-use Trail and Sidewalks*

The design thickness of street improvements shall be determined from actual field tests conducted by a responsible testing laboratory. The design section shall be submitted to, reviewed by, and approved by the City Engineer.

Subdivider will be required at the time of development of Phase I to construct the widening of Grand Avenue along with curb and gutter, and a 10-foot-wide asphalt multi-use path along the frontage. Subdivider shall be responsible for the maintenance and replacement of the sidewalk and/or trail after construction.

Stockman Avenue is designated by the City as a collector street. Subdivider shall construct the extension of Stockman Avenue to City standards which will include a 39 foot wide roadway back of curb to back of curb with curb and gutter and construction of a concrete boulevard sidewalk with a minimum width of 5-feet and minimum 5-foot boulevard width along both sides of Stockman Avenue. The Birely Drain-Stockman Avenue Crossings will not have boulevards on either side of the roadway and will have a 7-foot wide sidewalk where the sidewalk is adjacent to curb with railings or acceptable slope to the City Engineering Department.

The Subdivider will install an 8-foot wide trail along the side of the Birely Drain on the eastern side of the property. This trail will have surfacing as acceptable to the Birely Drain.

A 20-foot right-of-way shall be provided by the Subdivider for the connections to the trail, adjacent to the Birely Drain right-of-way, from within the Subdivision. The proposed connections shall align with formerly provided connections within the Trails West Subdivision. The 20-foot right-of-ways shall have 8-foot concrete sidewalks constructed within them connecting to the trail adjacent to the Birely Drain.

### **B. Street Lighting**

Construction or installation of street lights shall not be required at this time. If street lights are installed, a street light maintenance district will be formed for the entire Subdivision to accommodate maintenance of street lights. Street lights and the associated maintenance district shall be included in the waiver of right to protest.

### **C. Traffic Control Devices**

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 Engineering Division. No traffic signals are anticipated within this subdivision.

### **D. Billings Area Bikeway and Trail Master Plan**

The Subdivision does not have proposed future bikeway or trails included within the 2017 Update of the Bikeway + Trails Master Plan Update. A pathway connection in the subdivision is included matching the alignment with a pathway of the Trails West Subdivision to the east. Trails are also to be provided along the Birely Drain on the east side of the Subdivision and Grand Avenue along the north side of the Subdivision. The paths will be included within an HOA for maintenance by the Subdivision. All trails will be within dedicated public right-of-way or on Parkland.

## **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.

At a minimum, the following is required:

- 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.

A secondary access road will be provided through Trails West Subdivision 6<sup>th</sup> Filing, as discussed previously. This access road shall be 30 feet in width and shall have 10 inches of 1 ½ inch minus base course with 3 inches of asphalt surfacing. This access road will be constructed prior to final platting of Phase II should the Trails West Subdivision 6<sup>th</sup> Filing not have provided their Private Contract Fee to the City of Billings to have started construction by that time. If easement for this roadway cannot be acquired, the subdivision will be phased as discussed herein.

## 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.

- Storm Drain. The Subdivider will manage storm drainage within Subdivision in accordance with the City of Billings Stormwater Management Manual (2018). A single storm pond will be provided on Lot 1 of Block 9 of the Subdivision for the management of all stormwater within the Subdivision to meet City requirements. This lot will be dedicated to Stormwater Control on the face of the Plat and will be deeded to the City of Billings at the time of final platting. Stormwater will be discharged from the pond to the Birely Drain per agreement obtained from the Birely Drain by the Subdivider. The Subdivider shall create an HOA for purposes of maintenance of the stormwater pond.
- Birely Drain. The Birely Drain flows along the east side of the Developer Tract. Subdivider shall obtain information from Birely Drain on access and easement requirements within the Developer Tract. As required by the Billings Stormwater Management Manual, Subdivider shall either dedicate right-of-way or provide an easement of at least 20 feet in width along the west side and north side of Birely Drain.
- Subdivider acknowledges that there exists the potential for ditches and drains to overtop during rain events, resulting in flooding to adjacent properties. The locations and rate of overtopping is unknown; however, Subdivider shall account for this potential when subdividing, constructing homes or businesses and shall use flood proofing or establish elevations and grading plans accordingly to mitigate flooding. The degree of improvements

required will depend on the character of the adjacent ditch and drain and the location of development along the ditch and drain.

- In addition, Subdivider acknowledges that there exists the potential for adjacent ditches and drains to leak contributing to seasonally high groundwater conditions within the development; seasonal high groundwater will need to be accommodated in the design of stormwater management facilities and in building construction.

## **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 water and sanitary sewer System Development Fee (SDF) in effect at the time each individual building permit is issued. The SDF is attached to and paid for with each building permit.

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 Subdivider will extend a 20-inch water main located at the intersection of 60<sup>th</sup> Street West and Grand Avenue to the northwest corner of the Subdivision for approximately 270 feet. If requested by Subdivider, City staff will forward a Compensation Agreement to City Council for consideration and approval of oversizing of the water main.

An existing water main is located in Grand Avenue and fronts a portion of the Buffalo Crossing Subdivision. The Subdivider shall be responsible to compensate the City for their proportionate share of this existing water line in Grand Avenue adjacent to the Subdivision paid at final platting of Phase I.

As part of the plans for Buffalo Crossing Subdivision, an 8-inch water main is planned in Stockman Avenue, Buffalo Crossing Drive, Snake Butte Way,

White Clay Drive, Little River Loop, and 60<sup>th</sup> Street West. Provisions shall be made for the looping of the interior Subdivision water mains. Said mains and services will be approved by the Engineering Division and shall be installed in conformance with the design standards, specifications, rules and regulations of the City of Billings and Montana Department of Environmental Quality. An 8-inch water main will be extended across the Birely Drain crossing on Stockman Avenue to the Trails West Subdivision and to the property to the south of Buffalo Crossing Subdivision. The water main shall extend to the proposed east right of way line of the Birely Drain in the Trails West Subdivision and to the edge of the Birely Drain ditch on the south Stockman Avenue crossing. Both of the Stockman Avenue crossings may have reimbursement agreements completed by the Subdivider, if they so choose.

Improvements noted herein shall include, but not be limited to, any and all interim improvements that may be deemed necessary due to phased or partial construction.

## **B. Sanitary**

The Subdivider will extend 18-inch sanitary sewer from the existing manhole located at the intersection of 60<sup>th</sup> Street West and Grand Avenue to the west boundary of the Buffalo Crossing Subdivision. If requested by Subdivider, City staff will forward a Compensation Agreement to City Council for approval of oversizing of the sanitary sewer. Subdivider may submit a reimbursement agreement in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.

Developer shall be responsible to compensate the City for their proportionate share of the existing sanitary sewer main in Grand Avenue east the intersection of Grand Avenue and 60<sup>th</sup> Street West paid at final platting of Phase I.

An 8-inch sanitary sewer main will be constructed on 60<sup>th</sup> Street West to connect to the sanitary main located within Grand Avenue. The gravity sanitary sewer will be constructed as far as reasonably possible within the Buffalo Crossing Subdivision and low-pressure force main will service the remainder of the Subdivision. Said mains and services will be approved by the Engineering Division and shall be installed in conformance with the design standards specifications, rules and regulations of the City of Billings and Montana Department of Environmental Quality.

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

All telephone, gas, electrical power, and cable television lines shall be placed or in designated easements outside of the right-of-way and shall be installed

underground prior to surface improvements. The location of all such facilities shall be subject to approval of the City Engineer.

**VII. PARKS/OPEN SPACE**

Section 76-3-621 of the Montana Subdivision and Platting Act covers the park dedication requirement. Paragraph (1) calls for park area to be 11 percent of the land proposed to be subdivided into parcels of one-half acre or smaller. The required Parkland Dedication for Buffalo Crossing Subdivision is 2.86 acres. Parkland dedications in the amount of 3.40 acres are depicted on the face of the Plat as PRIVATE PARK. The proposed parks are to be maintained by a Private HOA set up by the Subdivider.

**VIII. IRRIGATION**

With the development of Buffalo Crossing Subdivision, the Subdivider and City agree that the irrigation ditch currently running along the north side of the property shall be perpetuated. Any improvements to the ditch shall be permitted and approved by the ditch owner. All irrigation rights or ditch shares associated with this property shall be terminated and no longer transferred to any property undergoing residential development.

**IX. SOILS/GEOTECHNICAL STUDY**

A preliminary geotechnical analysis will be performed for this property. This preliminary investigation will include testing for foundations design and settlement analysis.

**X. PHASING OF IMPROVEMENTS**

The subdivision is planned to include two Phases. The Subdivider may elect to complete all phases at one time if all requirements can be met. Phase I of the Subdivision will include the following lots:

- Block 1 Lots 1 through 9
- Block 2 Lots 1 through 6
- Block 3 Lots 1 through 6

Phase I improvements will include all right-of-way improvements within the Buffalo Crossing Subdivision for the right-of-way fronting the lots of Phase I. In addition, off-site improvements completed as part of Phase I will include all Grand Avenue improvements including extension of water and sewer main and roadway improvements as previously identified. Stormwater improvements will discharge to temporary storm ponds within the future right-of-way at the end of

the Phase I roadway improvements. Temporary storm pond sizing shall be as approved by City Engineering.

Phase II of the Subdivision will not be released or completed until the secondary access is in place and will include the following lots. If the access is in place prior to the time of final platting, no phasing will be included.

- Block 1 Lots 10 through 11
- Block 3 Lots 7 through 17
- Block 4 Lots 1 through 6
- Block 5 Lots 1 through 12
- Block 6 Lots 1 through 8
- Block 7 Lots 1 through 12
- Block 8 Lots 1 through 7 and
- Block 9 Lot 1

Phase II improvements will include all remaining right-of-way improvements within the Buffalo Crossing Subdivision for the right-of-way fronting the lots of Phase II. In addition, off-site improvements completed as part of Phase II will include improvements for Birely Drain crossings as previously discussed and the pathway adjacent to the Birely Drain as previously discussed. The stormwater pond and all associated improvements on Lot 1 of Block 9 will be completed as part of Phase II.

#### **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 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.

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

“SUBDIVIDER”

*Buffalo Crossing, LLC*

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MONTANA     )  
  : ss  
County of                             )

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 *Buffalo Crossing, LLC*, 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: \_\_\_\_\_

