

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

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City of Billings, Montana

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

Elysian Subdivision

This agreement is made and entered into this ___ day of _____, 20____, by and between *Development 55, LLC*, whose address for the purpose of this agreement is 2150 Coca Cola Lane, Rapid City, SD 57702, hereinafter referred to as “Subdivider,” and the CITY OF BILLINGS, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Elysian Subdivision*, located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on 22 day of May, 2023, the City Council conditionally approved a preliminary plat of Elysian 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 *Elysian 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

The Subdivider has not requested any variances from the City of Billings Subdivision Regulations.

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.

III. TRANSPORTATION

- A. A traffic impact study has been completed for Elysian 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:
- Elysian Road & Mallowney Lane shall be 2.83%.
 - Elysian Road & East Lane shall be 4.67%.
 - Elysian Road & South Frontage Road shall be 3.51%.
 - South Frontage Road and East Lane shall be 3.16%.
 - S Frontage Road and Mallowney Lane shall be 4.21%.
 - East Lane and Tun Tavern Road shall be 3.08%. To be built with Phase 1 of Elysian Subdivision.
 - Elysian Road and Leatherneck Lane shall be 6.14%. To be built with Phase 2 of Elysian Subdivision.

A Cash Contribution shall be based on the percent of traffic contributions to the

intersection based on the total cost of an intersection as determined by the City of Billings Engineering for the year in which the contribution is made. Cash contributions shall be made prior to final plat approval.

B. Streets

- Shackelford Lane is an existing local city road and is located within a 40' wide right-of-way (ROW). No additional right-of-way is being dedicated as part of this subdivision. The Subdivider will be responsible for building a paved roadway and temporary drainage structures that fit within the existing 40' ROW. Improvements will be made from the subject property south to the northern boundary of Bottrell Subdivision as part of Phase 1 of Elysian Subdivision.
- An existing water and sewer line are located in an undedicated access road within a 60-foot perpetual right-of-way for the City to be able to maintain the utility lines. This easement is located in the subdivision to the east of this proposed subdivision. This easement is recorded under Document number 4012842. There is a reciprocal access and utility easement between the two adjacent property owners per Document 3901539.

Tun Tavern Road is considered a Commercial Local Access as part of the City's Long-Range Transportation Plan (LRTP). 35' of ROW is being dedicated as part of Elysian Subdivision to conform with City requirements. A 30' Public Access Easement must be obtained from the adjacent private property owner to the south as part of the subdivision prior to final plat approval.

The Subdivider shall construct Tun Tavern Road as a local commercial road as part of Phase 1 of Elysian Subdivision. The road cross section will follow City Local Commercial Access Road standards.

- East Lane is an existing road and is located within a 60' wide County Road Easement. The City's LRTP considers East Lane a Collector. 37' of ROW is being dedicated as part of Elysian Subdivision to conform with City requirements.

No frontage improvements or cash-in-lieu is proposed as part of Elysian Subdivision. A future Special Improvements District (SID) will be created in order to improve the East Lane corridor and be assessed to Lot 5 within Elysian Subdivision. A Waiver of Right to Protest a future SID is included as part of this subdivision.

- Elysian Road is an existing road and is located within a 60' wide County Road Easement. The City's LRTP has Elysian Road as a future Collector. 37' of ROW is being dedicated as part of Elysian Subdivision to conform with City requirements.

No frontage improvements or cash-in-lieu is proposed as part of Phase 1 of Elysian Subdivision. A future Special Improvements District (SID) may be created to improve Elysian Road and be assessed to Lot 3 and Lot 4 along their frontage. Waiver of Right to Protest a future SID is included as part of this subdivision.

If no SID has been created at the time Lot 3 or Lot 4 are to be developed as part of Phase 2 of Elysian Subdivision, then frontage improvements will be required at that time. Lot 3 and Lot 4 property owners will each be responsible for their corresponding frontage improvements. These improvements may include curb and gutter, 10' wide multi-use path, street widening, water mains, and sewer mains.

- Leatherneck Lane is a proposed 70' of right-of-way being dedicated to the City. The Subdivider shall construct a local commercial road in (Leatherneck Lane) as part of Elysian Subdivision. The road cross section will follow City Local Commercial Access Road standards.

Phase 1 of Elysian Subdivision will construct (Leatherneck Lane) to the northern boundary of Lot 2 and Lot 5. An approved temporary turn-around shall be installed at the terminus of (Leatherneck Lane) as part of Phase 1. The temporary turn-around will be removed once the remainder of (Leatherneck Lane) is constructed north to Elysian Road during Phase 2.

Phase 2 of Elysian Subdivision will construct the remainder of (Leatherneck Lane) along the frontage of Lot 2 and Lot 4 all the way to the intersection with Elysian Road.

C. Sidewalks

Sidewalks within the subdivision will be the standard 5' wide sidewalk and 5' wide boulevard. Sidewalk ramps at intersections will be constructed by the Subdivider at the time of road construction. Sidewalks along private lot frontage will be constructed when the lot is developed. The sidewalk will be composed of concrete and be completed within the road's ROW to city standards.

Three pedestrian connections to Elysian School are provided as part of Elysian Subdivision. A pedestrian easement exists within the right of way of East Lane as part of Phase 1. A pedestrian easement within the right of way of Elysian Road as part of Phase 2. And a pedestrian easement on the south boundary of Lot 4 as part of Phase 2.

D. Street Lighting

There is no proposed street lighting, however street lighting is included as an item in the waiver of right to protest.

E. Traffic Control Devices

- One stop sign will be installed on Leatherneck Lane at the intersection with Elysian Road as part of Phase 2.
- One stop sign will be installed on Leatherneck Lane at the intersection with Tun Tavern Road.
- One stop sign will be installed on Tun Tavern Road at the intersection with East Lane.

F. Access

- Lot 1 of the subdivision will have access from Tun Tavern Road.
- Lot 2 and 3 will have access from Leatherneck Lane.
- Lot 4 will have access from Leatherneck Lane.
- Lot 5 will have access from Leatherneck Lane and Tun Tavern Road.

G. Billings Area Bikeway and Trail Master Plan

- There is a proposed Primary Bike Route shown along Elysian Road and East Lane in the Billings Area Bikeway and Trail Master Plan.

H. Public Transit

- Sidewalks are proposed adjacent to boulevards for Leatherneck Lane, Tun Tavern Road, Elysian Road, and East Lane.

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 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 twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.

The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

- The subdivision appears to be located within the moderate interface density of

the Wildland Urban Interface (WUI) per the Wildland Urban Interface Parcels Yellowstone County map provided by the Montana Department of Natural Resources and Conservation. The subdivision will be served by fire hydrants.

- The nearest ambulance providers are Eagle Ambulance Service and Beartooth EMS. Both providers are approximately 1 mile away from the subdivision.
- The subdivision will be served by City of Billings Police Department.

V. **STORM DRAINAGE**

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.

Storm Drainage for Elysian Subdivision will be provided by a combination of curb and gutter, underground piping and on-site retention/detention ponds. Stormwater runoff from the right-of-way will be mitigated in retention ponds on Lot 1 and Lot 5. Provisions for either a future connection to East Lane, or a means of discharge to local ditch will be provided. If stormwater runoff is to be discharged into a local ditch, the Subdivider must obtain permission from the ditch company.

All of the public stormwater infrastructure will be located within public easement or public ROW. Stormwater infrastructure located in the public ROW will be maintained by the City. Infrastructure, including piping and ponds, not in the ROW will be maintained by individual lot owners. A stormwater maintenance agreement will exist between the City and the Lot Owners.

Private lots will be required to mitigate stormwater from private development within private property boundaries.

The Stormwater Management Plan will be incorporated in the final version of the recorded SIA. If the development fails to maintain storm drainage facilities, the city has the right to create a maintenance district and maintain the facilities.

VI. **UTILITIES**

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The Subdivider shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department — Distribution and Collection 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 appropriate water and wastewater construction fees and franchise fee 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 Subdivider and future lot owners acknowledge 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

- Each lot is to be served by City of Billings through a water main extension. Phase 1 of Elysian Subdivision will construct a 12” water main in Leatherneck Lane north from Tun Tavern Road intersection to the northern boundary of Lots 2 and 5. Phase 1 will also include a 12” water main from the tee in Tun Tavern Road to the intersection of East Lane.
- Phase 2 of the Elysian Subdivision will construction a 12” water main in Leatherneck Lane from the southern boundary of Lots 3 and 4 to the intersection with Elysian Road. The water main extension will run in Elysian Road along Lot 3 and Lot 4 frontage.
- If an SID for Elysian Road is created, Lots 3 and 4 will be assessed for half of the construction of the water main fronting their property. If the SID is not created prior to development of Lots 3 and 4, construction of the water main will be required along their respective frontage at the time of development. Subdivider can enter into a reimbursement agreement with the City for half of the construction.

B. Sanitary Sewer

- Each lot is to be served by City of Billings through a sewer main extension. Phase 1 of Elysian Subdivision will construct a 12” sewer main in Leatherneck Lane north from Tun Tavern Road intersection to the northern boundary of Lots 2 and 5.
- Phase 2 of the Elysian Subdivision will construction a 12” sewer main in Leatherneck Lane from the southern boundary of Lots 3 and 4 to the intersection with Elysian Road. The sewer main extension will run in Elysian Road along Lot 3 and Lot 4 frontage.
- If an SID for Elysian Road is created, Lots 3 and 4 will be assessed for half of the construction of the sewer main fronting their property. If the SID is not created prior to development of Lots 3 and 4, construction of the sewer main will be required along their respective frontage at the time of development. Subdivider can enter into a reimbursement agreement with the City for half of the construction.

C. Power, Telephone, Gas, and Cable Television

Northwestern Energy, Montana-Dakota Utilities Company, Spectrum, and Direct are utilities that will be available at this site. All Private utilities will be located underground within the adjacent street rights-of-way or utility easement.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Elysian Subdivision, as this is a minor subdivision [MCA 76-3-621(3)(e)].

VIII. IRRIGATION

There is currently an irrigation ditch adjacent to the property within the Shackelford Lane right-of-way to the west of Lot 1, at the intersection with Tub Tavern Road. Any improvements to Shackelford Lane will require modifications to the irrigation ditch. Subdivider shall obtain approval from ditch owner for said modifications.

IX. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study was completed by Rimrock Engineering, Inc dated March 8th, 2023. This geotechnical study covers the subdivision infrastructure and the development on Lot 1. The Geotechnical Study suggests that individual geotechnical reports be completed prior to development of Lots 2 through 5 of the subdivision.

X. PHASING OF IMPROVEMENTS

A. Improvements of the subdivision are to be developed two (2) phases. The phases are defined as follows:

Phase 1

- Lots 1, 2, and 5
- Completed roads: Shackelford Lane, Tun Tavern Road, and Leatherneck Lane to the northern boundary of Lot 2 and Lot 5.
- Shall be opened immediately upon preliminary plat approval.

Phase 2

- Lots 3 and 4
- Completed roads: Remainder of Leatherneck Lane, frontage improvements on Elysian Road if no SID is in place at the time of development.
- Shall be opened on June 1, 2028.

B. The Subdivider does not desire to commence development of Phase 2 improvements within the subdivision at this time, but does desire to file the approved final plat for Elysian Subdivision. In accordance with the foregoing, the Subdivider and the City agree as follows:

- a. Improvements for Phase 2 shall be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey lots encumbered by Phase 2 without the improvements being completed or financially secured.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, lots in Phase 1 or sell and convey, as one unit, all lots in the Subdivision, however, the sale and transfer within this agreement have been met. Pursuant to this agreement, the Subdivider shall execute and record a Declaration of Restrictions on Transfers and Conveyances for said lots identified in Phase 2. Said declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred (except as provided above).

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install, and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or 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 special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING THE SUBDIVIDER

- A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.
- B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.
- C. The covenants, agreements, and all statements in this Agreement 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.

This agreement is hereby approved and accepted by the City of Billings, this _____ day of _____, 2023.

“CITY”
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
 : ss
County of Yellowstone)

On this _____ day of _____, 2023, 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.

SS _____