

**SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT
DISTRICTS
NALKUK SUBDIVISION
Table of Contents
(City of Billings)**

- I. Variances
- II. Property Conditions and Information for Lot Purchasers
- III. Transportation
 - A. Streets
 - B. Sidewalks
 - C. Street Lighting
 - D. Traffic Control Devices
 - E. Access
 - F. Billings Area Bikeway and Trail Master Plan
 - G. Public Transit
- IV. Emergency Services
- V. Storm Drainage
- VI. Utilities
 - A. Water
 - B. Sanitary Sewer
 - C. Power, Telephone, Gas, and Cable Television
- VII. Parks/Open Space
- VIII. Irrigation
- IX. Soils/Geotechnical Study
- X. Phasing of Improvements
- XI. Financial Guarantees
- XII. Legal Provisions Applying to Subdivider

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

NALKUK SUBDIVISION

This agreement is made and entered into this ____ day of _____, 202__, by and between *5PE, LLC, a Montana limited liability company*, whose address for the purpose of this agreement is **4402 Boulder Ridge Road, Bismarck, ND 58503**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *Nalkuk Subdivision*, located in the City of Billings, Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning as an administrative plat which was deemed to not require preliminary review; 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 *Nalkuk 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. None

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. Streets

- Lots within the proposed Nalkuk Subdivision will be accessed via Calhoun Lane and from the adjacent alleyway on the north side of the subdivision. No additional public roadways or streets are necessary to serve the Subdivision. Existing access to Lot 1 is provided via a driveway approach on Calhoun Lane. Lots 2 and 3 will be accessed via the platted 40-foot wide reciprocal access easement shown on the face of the plat.

B. Sidewalks

- Existing 7-foot wide curb walk exists along the Subdivision frontage along King Avenue East. Existing 6-foot wide curb walk exists along the Subdivision frontage along Calhoun Lane. No additional sidewalk is required of the Subdivision.

C. Street Lighting

- No street lighting is proposed with the subdivision as existing street lighting is present along King Avenue East and Calhoun Lane.

D. Traffic Control Devices

- No additional traffic controls are proposed or required for the Subdivision.

E. Access

- Existing access to Lot 1 is provided via a driveway approach on Calhoun Lane. Lots 2 and 3 will be accessed via the platted 40-foot wide reciprocal access easement shown on the face of the plat.

F. Billings Area Bikeway and Trail Master Plan

- Trails and bikeways called for in the Billings Area Bikeway and Trail Master plan are already installed along Calhoun Lane (bike lane) and King Avenue East (multi-use path on the south side of the road).

G. Public Transit

- The Subdivision is already located on Billings MET Transit routes, with a bus-stop being located on the NE corner of King Avenue East and Calhoun 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.
- Driveways exceeding 150' in length shall have an approved temporary turnaround.

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.

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 System Development 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 Subdivision will be served by the existing 12" waterline in King Avenue East (Lot 3) and by an existing 12" waterline in Calhoun Lane (Lots 1 and 2).

Lot 1 is currently served by a service connection to the 12" waterline in Calhoun Lane.

B. Sanitary Sewer

The Subdivision will be served by the existing 8" sanitary sewer line in Calhoun Lane and/or the existing 8" sewer line in the alley north of the Subdivision. The Developer will be responsible to reimburse the City for the 8" sanitary sewer fronting the property along Calhoun Lane.

C. Power, Telephone, Gas, and Cable Television

Utility easements are dedicated on the face of the plat to allow for power, telephone, gas, and cable television providers to maintain existing infrastructure within the Subdivision and provide new services if necessary.

VII. PARKS/OPEN SPACE

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

VIII. IRRIGATION

- No irrigation shares or rights are included with the Subdivision.

IX. SOILS/GEOTECHNICAL STUDY

- Individual lot owners are required to commission and prepare a geotechnical investigation prior to any development on the created lots as required by the City of Billings Building Department.

X. 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.

XI. 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”

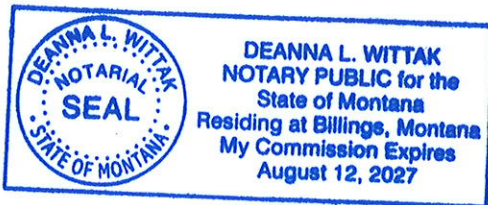
5PE, LLC, a Montana limited liability company

By: *Jason Kukowski*
 Title: *President*

STATE OF MONTANA)
 : ss
 County of)

On this *29th* day of *May*, 20*25* before me, a Notary Public in and for the State of Montana, personally appeared *Jason Kukowski*, known to me to be the *President* of *5PE, LLC, a Montana limited liability company*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Deanna L Wittak
 Notary Public in and for the State of Montana
 Printed Name: *Deanna L Wittak*
 Residing at: *Billings*
 My commission expires: *8-12-27*



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: _____



“SUBDIVIDER” 5PE, LLC, a Montana limited liability company

By: Jason Kukowski

Title: President

STATE OF MONTANA)
: ss
County of)

On this 29th day of May, 2025 before me, a Notary Public in and for the State of Montana, personally appeared Jason Kukowski, known to me to be the President of 5PE LLC, a Montana limited liability company, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

Deanna L Wittak

Notary Public in and for the State of Montana

Printed Name: Deanna L Wittak

Residing at: Billings

My commission expires: 8-12-27

