

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

44 West Subdivision

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(City of Billings)

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

44 West Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between *44 West Development, LLC*, whose address for the purpose of this agreement is **1536 Mullooney Lane, Suite 100; Billings, Montana 59101**, hereinafter referred to as “Subdivider,” and **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

WITNESSETH:

WHEREAS, the plat of *44 West 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 *44 West Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the City Council conditionally approved a preliminary plat of *44 West 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 *44 West Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

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

1. No variances are 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.

III. TRANSPORTATION

A. Streets

- 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 Stormwater Management Manual, and other applicable City codes, rules, and regulations.
- Tippet Trail will be 34 feet back of curb to back of curb. The street improvements will be completed by private contract or SID.
- South 44th Street West will be 48 feet back of curb to back of curb to the intersection with Tippet Trail. The street improvements will be completed by private contract or SID.
- All internal streets to provide a 34-foot back of curb to back of curb street width. The street improvements will be completed by private contract or SID
- A traffic accessibility study has been completed for the *44 West 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:
 - a. S. 48th and Central – 0.24%
 - b. Shiloh and Broadwater – 0.41%
 - c. Shiloh and Central – 1.59%
 - d. Shiloh and Monad – 0.39%
 - e. Central and 44th S West – 3.88%

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 cash contributions for the intersection improvement will be made prior to final plat approval.

- A turn lane on Central Avenue is not warranted with this subdivision.

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 replace 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. No trees are allowed to be planted in Carriage Lane rights-of-way. In addition, no shrubs taller than two (2) feet are allowed to be planted in Carriage Lane rights-of-way.

C. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks within public right-of-way or easements adjacent to or through their lot at the time of lot construction and shall be included in each building permit. The Subdivider shall construct sidewalk adjacent to private parks at the time of private park development.
- Sidewalks shall be 5-foot wide with a minimum 5-foot boulevard planting strip between the sidewalk and the curb with handicap ramps and aprons installed where necessary.

D. Street Lighting

- Street lighting will be installed by private contract or SID. A Street Light Maintenance District will be created in the future and is included in the waiver of right to protest.

E. Traffic Control Devices

- 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.
- No traffic signals are required within this subdivision. Stop signs shall be installed at the intersection of South 44th Street West and Central Avenue.
- 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 Central Avenue, South 44th Street West, Tippet Trail, Hatch Lane, Dryfly Lane, and Driftboat Trail. Carriage Lane access is also provided to all residential lots within the subdivision.

G. Billings Area Bikeway and Trail Master Plan

- The Subdivision is within the Billings Area Bikeway and Trail Master Plan. A 10-foot-wide multi-use trail will be constructed along Central Avenue. The trail improvements will be completed by private contract or SID.

H. Public Transit

- MET Transit provides services along Central Avenue with the closest stop at the intersection of Central Avenue and Shiloh Road, approximately 0.5 miles east of the Subdivision. No improvements are required to ensure public transit service.

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.

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. Additionally, a comprehensive drainage study has been completed for the Monad Drain with requirements that superseded the Stormwater Management Manual. The *Comprehensive Drainage Plan for the Monad Drain* is on-file at the City Engineering Department. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

Stormwater drainage will discharge east to Lot 5 or Clearwater Estates Subdivision, 1st Filing. A ditch will convey stormwater drainage south to a stormwater detention facility that is located within an off-site area on Tract 3, Certificate of Survey No. 3844. This detention facility will be sized to accept runoff generated from the *44 West Subdivision*. The detention facility will outfall to the Monad Drain as described in the *Comprehensive Drainage Plan for the Monad Drain*.

Per the *Comprehensive Drainage Plan for the Monad Drain*, construction of a dike and control structure within the drain will be required as part of a future subdivision of Tract 3 of Certificate of Survey No. 3844, or as determined necessary by City Engineering. These improvements are included as part of the Waiver of Right to Protest a Special Improvement District.

The HOA is responsible for the maintenance of stormwater facilities directly associated with the treatment and detention of runoff produced by the Subdivision. These facilities are not installed at this time, however, the HOA shall participate in the maintenance of such facilities planned for installation on Lot 5 of Clearwater Estates Subdivision and Tract 3 of Certificate of Survey 3077.

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 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 Subdivision will be extending a 16-inch water main along Central Avenue. The City will reimburse the Subdivider for the cost of upsizing the water main from a 12-inch line to a 16-inch line. If requested by the Subdivider, City staff will forward a Compensation Agreement to City Council for approval of oversizing of the water main in accordance with the City's Rules and Regulations Governing Water and Wastewater Service.
- A 12-inch water main will be installed along South 44th Street West and Tippet Trail.
- An 8-inch water main will be installed within Hatch Lane, Dryfly Lane, and Driftboat Trail.

B. Sanitary Sewer

- The Subdivision will be served by an existing 10-inch sanitary sewer main located within the alleyway along the western boundary at the south end of the Subdivision. The Subdivider is responsible for extending an 8-inch gravity sewer main to Central Avenue via South 44th Street West to allow for future connections to the north of the Subdivision.
- Gravity sewer mains no less than 8 inches in diameter will be extended throughout the Subdivision. Mains shall be sized to accommodate future growth inside and outside of the Subdivision.

C. Power, Telephone, Gas, and Cable Television

- Private utility facilities currently exist to serve the subdivision. The private utility facilities will be installed within 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

Section 76-3-621 of the Montana Code Annotated 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 the *44 West Subdivision* is 0.47 acres. Parkland dedications, in the amount of 0.42 acres, are depicted on the face of the plat as PRIVATE PARK. Additional parkland area will be dedicated as part of future

filings. Until that time, monetary security will be provided for the 0.05 acres that this filing is currently short.

Parks will be privately owned and maintained by a Private HOA created by the Subdivider.

VIII. 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.

IX. IRRIGATION

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.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study has been performed for the subdivision. A copy of this report is included as part of the infrastructure permitting documents and made public record through the Engineering Department. Lot owners and contractors/builders are encouraged to review the report and its recommendations or complete a site-specific geotechnical investigation.

XI. PHASING OF IMPROVEMENTS

The Subdivision is not proposed to be constructed in phases.

XII. 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, 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 (2) 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.

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: _____

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENTS DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more Special Improvement District(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

The real property hereinabove mentioned is more particularly described as follows:

44 West Subdivision

Signed and dated this _____ day of _____, 20__.

44 West Development, LLC

By: _____

Title: _____

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 _____, known to me to be the _____ of *44 West Development, 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: _____