

**SUBDIVISION IMPROVEMENTS AGREEMENT  
SPARKS INDUSTRIAL PARK SUBDIVISION**

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Yellowstone County**

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# **SUBDIVISION IMPROVEMENTS AGREEMENT**

## **Sparks Industrial Park Subdivision**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *SAMM, LLC*, whose address for the purpose of this agreement is **2225 S 54<sup>th</sup> St W, Billings, Montana 59106**, hereinafter referred to as “Subdivider,” and **YELLOWSTONE COUNTY**, hereinafter referred to as “County.”

### **WITNESSETH:**

**WHEREAS**, the plat of *Sparks Industrial Park 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 County Commissioners (BOCC) conditionally approved a preliminary plat of *Sparks Industrial Park Subdivision*; and

**WHEREAS**, a Subdivision Improvements Agreement is required by the County prior to the approval of the final plat.

**WHEREAS**, the provisions of this agreement shall be effective and applicable to *Sparks Industrial Park 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 Yellowstone County Subdivision Regulations, the rules, regulations, policies, and resolutions of Yellowstone County, 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**

No variances are requested as part of the subdivision application.

## **II. CONDITIONS THAT RUN WITH THE LAND**

- A.** 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.
- B.** 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.
- C.** 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.
- D.** There is attached hereto a Waiver waiving the right to protest the creation of the Rural Special Improvement District or districts (RSID) 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.
- E.** Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.
- F.** When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
- G.** Future maintenance of all public (or common) improvements shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.

- H.** Lot owners or their agents will obtain an Access Permit from County Public Works prior to any construction for the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or their agent removing what has been installed and locating the access in an approved location at the lot owners' expense.

### **III. TRANSPORTATION**

The subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County

#### **A. Streets**

- The property has access to the South Frontage Road and to Duck Creek Road.
- South Frontage Road is a state-owned road with a paved surface approximately 32 feet in width. Duck Creek Road is a paved County road approximately 24-feet wide.
- New roads will be constructed as part of this subdivision to county road standards. Roads will be public to the approved hammerhead turnaround as shown on the plat and private thereafter. Gates will be installed by the developer at the place where the roads change from public to private. The public portion of the newly constructed roads will be maintained by the creation of an RSID. A private driveway will serve Lots 3 and 5 and will be provided an easement. This private driveway easement will be expunged upon future subdivision filings to provide access to additional lots.
- Approach permits will be obtained for new approaches at time of construction in accordance to Yellowstone County Public Works standards.

#### **B. Sidewalks**

- Sidewalks will be installed on both sides of the street in accordance with Yellowstone County requirements.

#### **C. Street Lighting**

- No streetlights will be installed in this subdivision, though they are included in the Waiver of Right to Protest.

#### **D. Traffic Control Devices**

- Traffic control devices, if required, will be provided by the subdivider in accordance with the specifications of the County Public Works and the local Fire Department.

**E. Access**

- Access to the subdivision will be from South Frontage Road and Duck Creek Road.

**F. Billings Area Bikeway and Trail Master Plan (BABTMP)**

- The BABTMP shows South Frontage Road and Duck Creek Road as areas for future bike lanes, to be constructed with the road is built or widened.

**G. Public Transit**

- No public transportation systems will be created or expanded as part of this subdivision. This area is not on a Billings MET transit route.

**IV. EMERGENCY SERVICES**

- The subdivision is located within the Billings Fire Department service area.
- The Billings Fire Department will be invited to inspect the dry hydrant proposed within the subdivision, to be located on the north side of the subdivision.

**V. STORM DRAINAGE**

All drainage improvements shall comply with the provisions set forth in Section 4.7 of the Yellowstone County Subdivision Regulations.

**VI. UTILITIES**

**A. Water**

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by the Yellowstone County Health Department.

- The Subdivision water is proposed to be supplied by individual wells located on the lot which it serves.
- Wells shall conform to the standards set forth by the Yellowstone City-County Health Department and MDEQ.

**B. Sanitary Sewer**

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, all sanitary sewer systems must obtain approval by the Yellowstone County Health Department.

- The Subdivision is proposed to have individual septic and drainfield systems on each lot.
- The system shall conform to the standards set forth by the Yellowstone City-County Health Department and MDEQ.

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

- Power, natural gas, telephone, and cable will all be located within the right-of-way and utility easements shown on the plat.

**VII. PARKS/OPEN SPACE**

There is no parkland dedication requirement for first minor subdivisions or non-residential subdivisions (MCA 76-3-621(3)(b) and (e)).

**VIII. IRRIGATION**

There are no known water rights associated with the property.

**IX. WEED MANAGEMENT**

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

The weed plan shall include the following and shall be referenced in this SIA:

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.
- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

**X. SOILS/GEOTECHNICAL STUDY**

A geotechnical study is not required by the Yellowstone County Subdivision Regulations as part of this plat. Unit 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 limitation for proposed construction on the lots, which may require a geotechnical survey prior to construction.

## **XI. PHASING OF IMPROVEMENTS**

There is no intended phasing of improvements. Utilities will be constructed at the time of development.

## **XII. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the Planning Board and Board of County Commissioners. 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 designed by and constructed under the supervision of a professional engineer competent in civil engineering, licensed in the state of Montana. Upon completion of the improvements, the consulting Engineer shall file with the Public Works Department, a statement certifying that the improvements have been completed in accordance with approved, seal stamped, record drawings, along with all required post-construction certification per Section 4.6.C. of the Yellowstone County Subdivision Regulations.

(In the event that all required improvements are not installed and constructed prior to final plat approval, the Subdivider shall provide a monetary security guarantee in the amount of 125% of the estimated total cost by one (1) of the methods listed in Chapter 5 of the Yellowstone County Subdivision Regulations).

## **XIII. LEGAL PROVISIONS**

- A.** Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.
- 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 apply to and shall be binding on the heirs, personal representatives, successors and assigns 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.
- G.** Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.



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

“SUBDIVIDER”

*SAMM, LLC*

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

Its: \_\_\_\_\_

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 *SAMM, LLC*, the person who executed the forgoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

This agreement is hereby approved and accepted by Yellowstone County, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“COUNTY”  
COUNTY OF YELLOWSTONE  
MONTANA

County of Yellowstone  
Board of County Commissioners

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

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

Attest: \_\_\_\_\_  
County Clerk and Recorder

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 Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# Waiver of Right to Protest

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 Rural Special Improvement Districts (RSID's) which the Yellowstone County may require for a period of twenty years from the date of this document's recording.

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.

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

*Sparks Industrial Park Subdivision*

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“SUBDIVIDER”

*SAMM, LLC*

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

Its: \_\_\_\_\_

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 *SAMM, LLC*, the person who executed the forgoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

Notary Public in and for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_