

COMMISSIONER MEETINGS

All meetings take place in the Commissioners Conference Room (308)
located in the Ostlund Building @ 2825 3rd Ave N (3rd Floor)
and are open to the public unless otherwise noted

THURSDAY - SEPTEMBER 10, 2026

8:45 Calendar

9:00 COMMISSIONERS DISCUSSION

PLEDGE

DEPARTMENTS

1. **Planning Department** - Whitehorse Estates Subdivision, 2nd Filing - Major Subdivision
2. **Public Works** - LAG Agreement - Lockwood Sidewalk
3. **Cheyenne Leads** - Laramie County Data Center
4. **Bill Honaker** - Courthouse Sky Bridge
5. **Mark Hofland** - Broadview Town Marshall

COMMISSIONERS

1. Gabel Gravel Pit - Storm Debris
2. Board Applications - Dennis Cook to Consolidated Zoning Commission & Richard Klose to Area II Agency on Aging
3. Commissioner Board Reports

PUBLIC COMMENTS ON COUNTY BUSINESS

**Public comment is an opportunity for individuals to address the Board, however, the Board cannot engage in discussion or take action on items not properly noticed on the agenda. Public comment is limited to 3 minutes per individual.*

Meeting Date: 09/10/2026

SUBJECT: Whitehorse Estates Subdivision, 2nd Filing - Major Subdivision

THROUGH: Anna Vickers

FROM: Dave Green

TOPIC

Planning Department - Whitehorse Estates Subdivision, 2nd Filing - Major Subdivision

INTRODUCTION

On July 1, 2026, Performance Engineering, Taylor Kasperick, agent, applied for preliminary major plat approval of Whitehorse Estates Subdivision, 2nd Filing. The subdivision will create 13 lots for residential development. The subject property is generally located west of South 48th Street West, and north of Hesper Road. This parcel of land is zoned RR1-Rural-Residential 1. This requires a 1 acre to 2.9 acre lots. These lots will be for residential development on large lots.

RECOMMENDATION

The Planning Board conducted a public hearing to take public comment, and is forwarding a recommendation of conditional approval to the Board of County Commissioners for the preliminary plat of Whitehorse Estates Subdivision, 2nd Filing, approval of the variances requested, and adoption of the Findings of Fact, as presented in the staff report.

VARIANCE REQUESTED

- The applicant has requested a variance from Section 4.6.B.7 of the Yellowstone County Subdivision Regulations is being requested regarding the right-of-way width along S 52nd Street West. The regulations require subdividers to provide the entire right-of-way if they cannot get the required right-of-way from the adjacent property owner. The Developer is requesting to provide half of the road width with this variance. Staff, which include Planning, County Public Works and County Legal, are recommending approval of the variance request. Further explanation and analysis can be found in Attachment A.
- The applicant has requested a variance from Table 4.6.C.1 of the Yellowstone County Subdivision Regulations for constructed road width is being requested, regarding the constructed roadway width for S 52nd Street West. This variance is requesting to build a standard 24-foot-wide road with two-foot shoulders on each side, instead of the 44' wide road within an 80' right of way. This variance is a companion to the first variance. Staff, which include Planning, County Public Works and County Legal, are recommending approval of the variance request. Further explanation and analysis can be found in Attachment B.
- The applicant has requested a variance from Section 4.4.G of the Yellowstone County Subdivision Regulations is being requested regarding the creation of double frontage lots within the proposed subdivision. This variance is regarding double frontage lots. Lots on the western edge of the subdivision have frontage on the internal street, and the future collector road South 52nd Street West. Staff, which include Planning, County Public Works and County Legal, are recommending approval of the variance request. Further explanation and analysis can be found in Attachment C.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To protect water users and the interests of water users downstream, prior to final plat, the applicant will follow the requirements of YCSR Section 4.13, Disposition of Water Rights, and create or designate a single entity that handles disposition and management of water rights to each property owner.
2. To protect public health and safety, prior to final plat approval, the applicant will receive approval from the MDEQ for the proposed water systems, septic systems and the proposed storm water management.
3. To provide a maintenance mechanism for the new sections of public roads with the subdivision and to protect public health and safety, prior to final plat approval, the applicant will petition to create an RSID for the future maintenance of the public roads.
4. To provide correct road rights-of-way widths and road construction width, should the variances for right-of-way and road construction width not be granted, prior to final plat approval, the developer will provide the correct road right-of-way for S 52nd St W and build the road surface as required by County Public Works.
5. To minimize the effects on local service, prior to final plat approval, the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.
6. To minimize effects on the natural environment, prior to final plat approval, a weed management plan and property inspection shall be completed by the County Weed Department.
7. To meet the requirements of Yellowstone County Subdivision Regulations, prior to final plat approval, the applicant shall complete the Yellowstone County Subdivision Regulation requirement in Section 10.6 to determine the appropriate cash-in-lieu contribution.
8. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
9. The final plat shall comply with all requirements of the Yellowstone County Subdivision Regulations, rules, policies, and resolutions of Yellowstone County, and the laws and Administrative Rules of the State of Montana.

PROCEDURAL HISTORY

- Pre-application meeting February 26, 2026
- Preliminary plat application submitted to Planning Division on July 1, 2026
- Departmental Review Meeting July 16, 2026
- Re-submittal of proposed plat July 23, 2026
- Planning Board plat review meeting August 11, 2026
- Planning Board public hearing meeting August 25, 2026
- Preliminary plat to Board of County Commissioners, September 22, 2026
- 60 working-day preliminary plat review period ends September 24, 2026

PLAT INFORMATION

General location: The subject property is generally located west of South 48th Street West, north of Hesper Road.

Legal Description: Lots 1A-1 and 2A-1 of the Amended Plat of Lot 12 of Whitehorse Estates, 1st Filing of Lot 1A of Amended Plat of Lots 1 and 2 of the Plat of Whitehorse Subdivision.

Owner/Subdivider: Nexco, LLC

Surveyor/Engineer: Performance Engineering

Existing Zoning: RR1

Proposed Zoning: RR1

Existing Land Use: Former Farmland

Proposed Land Use: Large Lot Single Family

Gross area: 21.299 acres

Net area: 16.73

Proposed number of lots: 13

Max.: 78,573 square feet

Min.: 45,723 square feet

Parkland requirements: Parkland dedication for this subdivision is 36,444 square feet. The applicant will be making a cash-in-lieu contribution for the parkland requirement.

PLANNING BOARD PUBLIC HEARING DISCUSSION

Planning Board Public Hearing - August 25, 2026

The Planning Board held a public hearing on August 25, 2026. Staff gave a presentation to the Planning Board and the public in attendance. Staff went over the proposed subdivision and the requested variances. Staff then stood for any questions that the members of the board may have. Board member Ronquillo asked the distance of the subdivision from City Services? Staff informed the board that the nearest water and sewer lines are at the intersection of Shiloh and Hesper or King and S 48th St. West. Board member Stahly asked about the construction of S 52nd St West, paving, and if it is built at 24 feet wide, are there other roads to north that are built wider than this requested section of road through the variances? Staff answered that north of this subdivision there are no sections of road constructed wider. There are sections that are gravel within a 40-foot wide right of way. Board member Stahly asked if there be parking on S 52nd St West? Staff stated that since there would be no access from the lots to 52nd, there should be no parking on the road. The last question from the board to staff was regarding what the fire suppression is for this subdivision? Board President, John Staley stated that a 30,000 gallon fire tank just east of this subdivision.

The Planning Board President opened the public hearing. Mr. and Mrs. Miller stood to speak. They own the farm to the west. The Millers informed the board that the ditch on the common boundary between their farm and the subdivision is a drainage ditch that hasn't been used for 10–12 years. They believe there would be no reason to keep it and wanted to understand if the ditch would be removed. Staff clarified that there could be an easement for the drainage ditch and the developer will need to determine if removal of the ditch effects any users up or downstream.

Another couple stood to speak, Matthew and Karen Washut. They asked about water rights, and how this subdivision would affect them. Also, they were concerned about the weeds, and who takes care of them? Staff responded that the water and septic system have to be approved by DEQ. Staff informed them that the subdivider will need to have a weed management plan. This is enforced by the County Weed Department.

Mr. Taylor Kasperick, agent for the subdivider, stood to address the board. He stated the variances requested are the main issues with the subdivision. He also stated that parking would not be allowed on S 52nd St West. He moved to the requirement of having DEQ review all proposed water wells and septic systems. He stated they had not begun the process of obtaining approval yet. The Board also discussed the irrigation ditch located within or adjacent to the proposed roadway area. Mr. Kasperick stated that the ditch may be affected by roadway construction. If the ditch is no longer in use, it could potentially be paved over. Staff stated that if the ditch has an easement on it that would need to be resolved. They also need to make certain there are no users downstream or upstream that would be affected by having the ditch removed. Mr. Kasperick stated that additional information regarding ownership and use of the ditch would be gathered during the design process.

One final question from the board was in regard to S 52nd St West. If development does not take place to the west, will 52nd remain a residential road? Staff responded that it would remain a residential use road only because it would only be for the benefit of this subdivision.

The public hearing was closed as there were no other questions from the board or from the public. A motion was made by Board member Stephenson to recommend conditional approval of the Whitehorse County subdivision, findings of fact, nine (9) conditions of approval, and three (3) variances. The motion

was seconded by Board member Gravgaard. The motion passed unanimously.

YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS FINDINGS OF FACT

See Attachment Findings of Fact.

CONCLUSIONS OF FINDINGS OF FACT

See Attachment Findings of Fact.

RECOMMENDATION

The Planning Board conducted a public hearing to take public comment, and is forwarding a recommendation of conditional approval to the Board of County Commissioners for the preliminary plat of Whitehorse Estates Subdivision, 2nd Filing, with approval of the variances requested, and adopt the Findings of Fact as presented in the staff report.

Attachments

Proposed Plat

Draft SIA

Findings of Fact

Variance request from applicant A

Variance request from applicant B

Variance request from applicant C

Variance A Staff Input

Variance B Staff Input

Variance C Staff Input

PE STANDARD CTB 8/26/2026 1:10:42 PM Z:\Dom\2025-135 Whitehorse Estates 2nd Filing\CADD\DWG\Plat\25-135 WH Estates 2nd Filing Prelim Plat.dwg

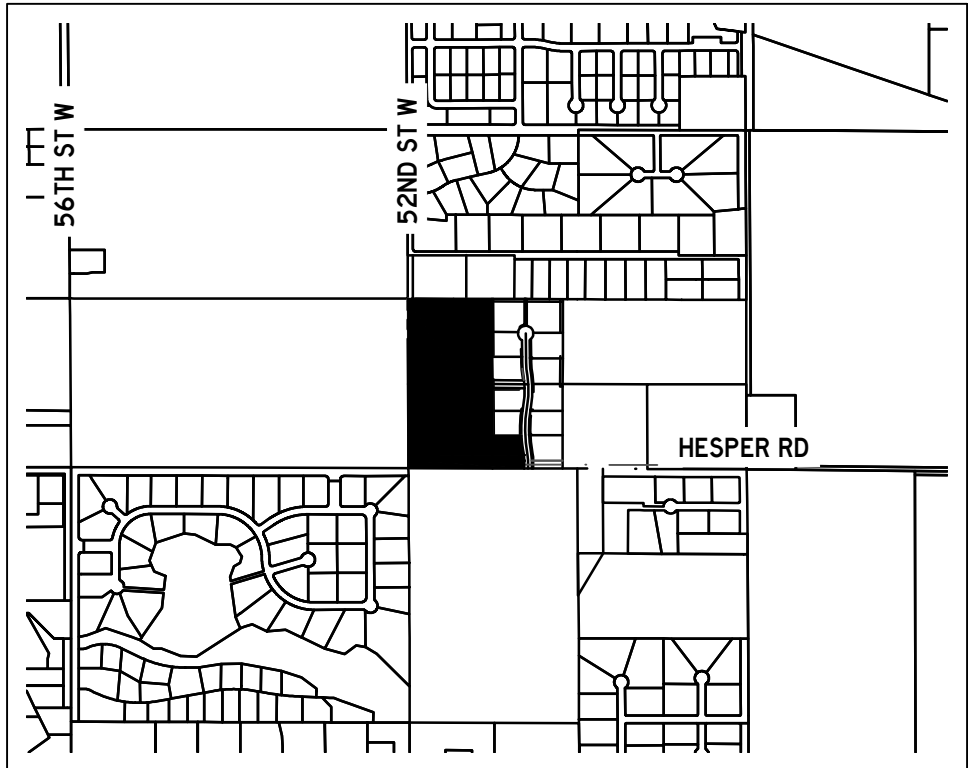
PRELIMINARY PLAT OF
WHITEHORSE ESTATES SUBDIVISION, SECOND FILING

BEING

LOTS 1A-1 AND 2A-1 OF THE AMENDED PLAT OF LOT 12 OF WHITEHORSE ESTATES, 1ST FILING AND LOT 1A OF AMENDED PLAT OF LOTS 1 AND 2 OF THE PLAT OF WHITEHORSE SUBDIVISION, LOCATED IN THE SE 1/4 OF SECTION 16, T. 01 S., R. 25 E., P.M.M., YELLOWSTONE COUNTY, MONTANA

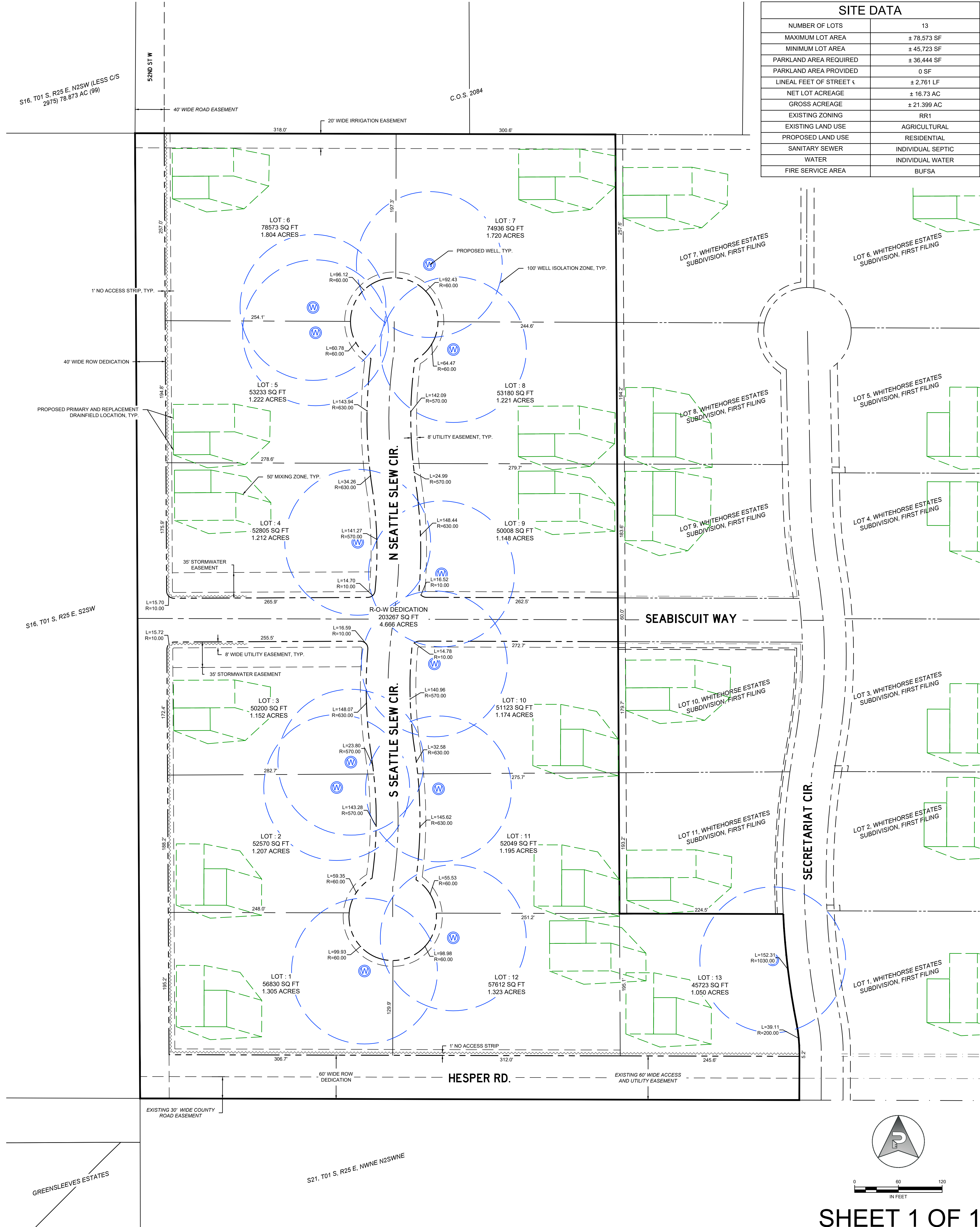
PREPARED FOR : NEXCO, LLC.

PREPARED BY : PERFORMANCE ENGINEERING, LLC



VICINITY MAP
NOT TO SCALE

SITE DATA	
NUMBER OF LOTS	13
MAXIMUM LOT AREA	± 78,573 SF
MINIMUM LOT AREA	± 45,723 SF
PARKLAND AREA REQUIRED	± 36,444 SF
PARKLAND AREA PROVIDED	0 SF
LINEAL FEET OF STREET	± 2,761 LF
NET LOT ACREAGE	± 16.73 AC
GROSS ACREAGE	± 21.399 AC
EXISTING ZONING	RR1
EXISTING LAND USE	AGRICULTURAL
PROPOSED LAND USE	RESIDENTIAL
SANITARY SEWER	INDIVIDUAL SEPTIC
WATER	INDIVIDUAL WATER
FIRE SERVICE AREA	BUFSA



0 60 120
IN FEET

SUBDIVISION IMPROVEMENTS AGREEMENT
Whitehorse Estates Subdivision, 2nd Filing
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SUBDIVISION IMPROVEMENTS AGREEMENT

Whitehorse Estates Subdivision, 2nd Filing

This agreement is made and entered into this ____ day of _____, 20__, by and between *NEXCO LLC.*, whose address for the purpose of this agreement is **2680 Overland Ave., Suite F Billings, MT 59102**, hereinafter referred to as “Subdivider,” and YELLOWSTONE COUNTY, Montana, hereinafter referred to as “County.”

WITNESSETH:

WHEREAS, the plat of *Whitehorse Estates Subdivision, 2nd Filing*, 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 *Whitehorse Estates Subdivision, 2nd Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20__, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of *Whitehorse Estates Subdivision, 2nd Filing*; 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 *Whitehorse Estates, 2nd Filing* 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

1. A variance from Section 4.6.B.7 of the Yellowstone County Subdivision Regulations is being requested regarding the right-of-way width along 52nd Street West.
 - a. South 52nd Street is classified as a Future Collector according to Roadway Functional Classification Map. The Yellowstone County Subdivision Regulations do not specifically establish required right-of-way dedications for Future Collector roadways; therefore, the standards for a Minor Arterial

with two (2) lanes are assumed to apply. The standard for this roadway requires 80' right-of-way dedication and 44' road width. This variance is requesting acceptance of South 52nd Street West be dedicated as 40' right-of-way currently, with the remainder being dedicated as the parcel to the west is subdivided.

2. Variance from Section 4.6.C.1 of the Yellowstone County Subdivision Regulations for constructed road width is being requested, regarding the constructed roadway width for South 52nd Street West.
 - a. South 52nd Street is designated as a Future Collector according to the Roadway Functional Classification Map. The Yellowstone County Subdivision Regulations do not specifically establish required roadway widths and right-of-way dedications for Collector Roadways; therefore, the standards for a Minor Arterial with two (2) lanes are assumed to apply. This roadway requires 80' right-of-way dedication and 44' road width. This variance is requesting acceptance of South 52nd Street West be constructed with 24' paved asphalt surfacing with 2' shoulders on each side at the time of development.
3. Variance from Section 4.4G of the Yellowstone County Subdivision Regulations is being requested regarding the creation of through lots within the proposed subdivision.
 - a. Section 4.45G of the Yellowstone County Subdivision Regulations states that double frontage lots are permitted only when necessary due to topographic conditions and when a no-access strip is provided. The proposed subdivision design includes a cul-de-sac located within the interior of the development, resulting in the creation of through lots. This layout is intended to ensure that residential lots within the subdivision obtain primary access from a local internal roadway rather than directly from the future collector roadway. A no-access strip will be provided along the future collector roadway frontage to prevent direct vehicular access and eliminate the potential for dual frontage access.

II. CONDITIONS THAT RUN WITH THE LAND

- A. Lot owners should be aware that this subdivision is 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; OR water rights are being split in the following way. 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 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.
- 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 at no cost to the County 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 agent will obtain an Access Permit from the County Public Works prior to any construction on any lot within 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 owner's expense.
- I.** Future lot owners need to be aware they are inside county zoned area and are required to obtain a zoning compliance permit before construction on the lots from City/County Planning Division.

III. TRANSPORTATION

A. Streets

- The proposed subdivision fronts Hesper Road which is twenty-four-foot (24ft) wide asphalt with 2-foot (2ft) gravel shoulders. A sixty-foot (60ft)

half width county road easement exists on Hesper Road from Whitehorse Subdivision. The land within this easement fronting *Whitehorse Estates Subdivision, 2nd Filing* will be dedicated as public right-of-way to Yellowstone County as part of this subdivision.

- Forty feet (40') half right-of-way for South 52nd Street West along the western extents of the subdivision will be dedicated to the public and Yellowstone County as part of the subdivision platting. The additional forty feet (40') of right-of-way will be dedicated as the unplatted parcel directly west of the subdivision is subdivided. At the time of development, South 52nd Street West will be constructed with an asphalt width of 24-ft with 2-ft gravel shoulders to allow for two-way traffic.
- Residential streets (Seabiscuit Way, North Seattle Slew Circle, and South Seattle Slew Circle) will have an asphalt width of 24-ft with 2-ft gravel shoulders. The streets will be built to County Standards as outlined in the Yellowstone County Subdivision Regulations, Figure 4.6.C.3. These streets will be dedicated as public right-of-way to Yellowstone County as part of this subdivision.
- Maintenance of said roads will be funded through the creation of an RSID. The public dedication documents and RSID waiver will be filed with the final plat documents.

B. Traffic Control Devices

- Subdivider shall furnish the necessary traffic control devices within and adjacent to the subdivision as required by the county. Traffic control devices shall comply with the Manual Traffic Control Devices (MUTCD) and County standards.
- Subdivider shall furnish and install street name signs for streets within the subdivision, or located immediately adjacent thereto, in accordance with the specifications of the County Public Works and Fire department.

C. Access

- The development has two access locations to the subdivision. One access will be from South 52nd Street West at the time of construction. The second access will be from the connection provided by Seabiscuit Way, which was dedicated and constructed as part of Whitehorse Estates Subdivision, 1st Filing. Access to each lot will require an approach permit from the county.

D. Billings Area Bikeway and Trail Master Plan

- Both Hesper Road and South 52nd Street West have long range bike lanes proposed. Subdivider is not required to install bike lanes as part of this development
- Hesper Road has a shared use path proposed. Subdivider is not required to install a shared use path at this time.

IV. EMERGENCY SERVICE

The Billings Urban Fire Service (BUFSA) currently provides fire protection for the subdivision.

A 30,000-gallon dry hydrant and water storage tank is located in the southwestern part of Lot 4 of Whitehorse Subdivision for fire protection as part of the original subdivision. Fire protection will be provided via BUFSA. Plans for the dry hydrant have been submitted to the Billings Fire Department (BFD) and are approved. The dry hydrant has been installed by the developer of Whitehorse Subdivision, and tested and inspected by the BUFSA.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by the Montana Department of Environmental Quality (MDEQ), or its designee.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval of sanitary improvements. The property owner shall make an application for sanitary improvements to the Yellowstone County Sanitarian and Montana Department of Environmental Quality. 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.

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, all proposed water systems must obtain approval by the MDEQ, or its designee.

Individual on-site water wells shall be installed as approved by the Department of Environmental Quality and the Department of Natural Resources and Conservation.

B. Septic System

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, all proposed sanitary sewer systems must obtain approval by the MDEQ, or its designee.

Individual on-site wastewater disposal systems shall be installed as approved by Montana Department of Environmental Quality.

C. Power, Telephone, Gas, and Cable Television

Power, natural gas, telephone, and cable will all be located within access and utility easements.

VII. PARKS/OPEN SPACE

There is no dedicated parkland for Whitehorse Estates Subdivision, 2nd Filing. Cash-in-lieu will be paid in place of the 5% of the net land proposed per Section 10.2.A Yellowstone County Subdivision Regulations

VIII. IRRIGATION

The subdivision is located within the Big Ditch Company boundary. Each lot will receive shares for water from the Big Ditch Company, prorated for the size of the lot based on the original allotment associated with the original tract. Lots will have access to Big Ditch Company facilities and each lot within the subdivision will be assessed annually by the Big Ditch Company.

IX. WEED MANAGEMENT

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

- 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. 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 limitation for proposed construction on the lots, which may require a geotechnical survey prior to construction.

XI. PHASING OF IMPROVEMENTS

There is no phasing of improvements.

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 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.

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”

NEXCO LLC.

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 _____, (*Subdivider*), 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 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 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:

Whitehorse Estates Subdivision, 2nd Filing

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

Subdivider/Owner

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 _____, the person who executed the forgoing instrument and acknowledged to me that he/she 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 in Billings, Montana
My commission expires: _____

FINDINGS OF FACT

The City-County Planning Division Staff has prepared the Findings of Fact for Whitehorse Estates Subdivision, 2nd Filing. These findings are based on the preliminary plat application and supplemental documents addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Yellowstone County Subdivision Regulations (YCSR).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health and safety (76-3-608 (3) (a) MCA) (Section 3.2 (H) (2) YCSR)

1. Effect on agriculture and agricultural water users' facilities

The subject property has been used for farming purposes. Each lot will receive shares for water from the Big Ditch Company, prorated for the size of the lot based on the original allotment associated with the original tract. In the Yellowstone County Subdivision Regulations Section 4.13 Disposition of Water Rights, it states that if the water rights are to be shared among the new lots and property owners there needs to be a single entity that handles the water rights. This entity handles water rights for the owners within the subdivision. Also, a landowner's water use agreement must be established. **(Condition #1)** 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. There will be no effect on the water users downstream from this property.

2. Effect on local services

a. **Water** – The proposed subdivision is not located within any public water district. Each lot within the Whitehorse Estates Subdivision, 2nd Filing, will be served by individual wells. The operation and maintenance of the water system will be the responsibility of individual lot owners. Water systems will be installed meeting the requirements outlined in Section 4.9 of the Yellowstone County Subdivision Regulations and the MDEQ. **(Condition #2)**

b. **Septic** - The proposed subdivision is not located within any public sewer district. Wastewater treatment for the subdivision will be managed through individual septic systems installed on each lot. The wastewater disposal systems will be submitted to and approved by Montana Department of Environmental Quality. These systems shall be located and installed as approved by Montana Department of Environmental Quality, or its designee. Septic systems will be installed to meet the requirements outlined in Section 4.8 of the Yellowstone County Subdivision Regulations and the MDEQ. **(Condition #2)** The operation and maintenance of the septic system will be the responsibility of individual lot owners.

All private utilities, power, telephone, gas and cable television will be installed in the public and private right of way or easements identified on the plat.

c. **Streets and roads** – Access will be provided from a proposed road within the subdivision, Sea Biscuit Way. They also show access from S 52nd Street West, both accesses have a connection to Hesper Road. There is a variance request concerning S 52nd Street West right-of-way and one for built street width.

Roads within the subdivision will be public roads and will be built to the County standard paved surface road. The public roads will be in 60-foot-wide rights-of-way. Roads will be built with a 24-foot paved surface and 2-foot gravel shoulders on each side. An RSID will be created to maintain the public road portion. **(Condition #3)**

Should the variances for the right-of-way and road width not be granted, the applicant shall provide the required right-of-way for a collector road and be responsible for building the required road width as determined by County Public Works. **(Condition #4)**

Traffic Study – According to the ITE Trip Generation Manual, 11th Edition, a 13-lot single-family detached housing subdivision would generate approximately 123 trips on a typical weekday with an average rate of 9.43 trips per household. This falls below the 300 vehicular trip threshold set in the Yellowstone County Subdivision Regulations. No TIS is warranted under the regulations.

d. **Fire and Police services** – The property is within the Billings Urban Fire Service Area (BUFSA) boundary. This subdivision will be provided fire service from the BUFSA. There is an existing dry hydrant tank installed alongside Hesper Road just east of the proposed subdivision and within the ½ road mile from the farthest point in the subdivision.

The Yellowstone County Sheriff's Department will provide law enforcement services to this subdivision.

e. **Solid Waste disposal** – The Billings Landfill has capacity for solid waste disposal. Solid waste will be collected and disposed of by a private garbage collection company. Each lot owner will be responsible for arranging for collection.

f. **Storm water drainage** – Because of the large lots of this subdivision, 1 acre and above, the majority of storm water will remain on each lot. Proposed storm water drainage shall be submitted to the MDEQ for review and approval prior to final plat. All proposed stormwater systems shall meet the requirements of Section 4.7 of Yellowstone County Subdivision Regulation's and the requirements of MDEQ. **(Condition #2)**

g. **School facilities** – The proposed subdivision is located within Elder Grove School District for K through 8. Elder Grove School responded that the Elementary School has a capacity of 550 with recent enrollment at 500. The Middle School capacity is 300 with a recent enrollment of 250. West High School will provide school for grades 9 through 12. West High School capacity is shown as 1731 with current enrollment of 2133.

h. **Parks and recreation** – Parkland dedication is required for this subdivision. They are

required to provide 36,444 square feet of parkland. The applicant is proposing to provide a cash in lieu contribution to satisfy the requirement of parkland. **(Condition #7)**

i. **Postal Service** – The applicant will be required to coordinate with the USPS to ensure the space they are proposing is a safe location for the postal worker to deliver the mail and the residents to retrieve their mail. The applicant is currently showing the location on the north entrance where the road is a public road. **(Condition #5)**

j. **Historic features** – No known historic or cultural assets exist on the site.

k. **Phasing of Development** – No phasing is proposed for this subdivision.

3. Effects on the natural environment

The development will use noxious weed control measures to prevent the spread of noxious weeds to adjacent developed or agricultural land. As required by County Subdivision Regulations Section 4.15 all county subdivisions are required to apply for and obtain a weed management plan with the County Weed Department. Any subdivision that has an existing Weed Management Plan is required to get an updated Weed Management Plan. A weed management plan will be completed, and a copy will be submitted with final plat. **(Condition #6)**

There are no apparent or known natural hazards on the property.

4. Effects on wildlife and wildlife habitat

This subdivision is not required to provide an Environmental Assessment. It is exempt from the requirement as outlined in Yellowstone County Subdivision Regulations, Section 9.2, C. 3. a. and b.

There are no known endangered or threatened species on the property. A paragraph in the ‘Conditions that Run with the Land’ section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential landscaping.

5. Effects on public health and safety

Plans and designs for the water and septic system will be reviewed and approved by MDEQ prior building construction on each lot to ensure public health and safety.

Fire and emergency services are provided for this proposed subdivision from Billings Fire Department and the Yellowstone County Sheriff’s department.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603 MCA) (Chapter 9, YCSR)

This subdivision was not required to provide an Environmental Assessment. It is exempt from the requirement as outlined in Yellowstone County Subdivision Regulations, Section 9.2, C. 3. a. and b.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. Yellowstone County - 2008 Growth Policy

The subdivision is consistent with the following goals of the Growth Policy:

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)

The subdivision is consistent with the type of large lot residential development to the north, southwest and southeast along Hesper Road.

- Goal: Controlled weed populations. (p. 9)

The developer shall complete a weed management plan and shall provide a re-vegetation plan for any ground disturbed by development.

2. 2023 Billings Urban Area Long Range Transportation Plan

The subject property maintains the road study area of the Transportation Plan. As proposed, the internal streets are neighborhood streets associated with this subdivision. S 52nd St West is also identified on the Long-Range Transportation Plan.

3. Billings Area Bikeway and Trail Master Plan (BABTMP)

This subdivision is within the BABTMP boundaries for trails. There is a future trail identified on what will become S 52nd St W, on the western side of the subdivision. There is also a future trail identified on Hesper and S. 48th ST W. This subdivision will not be required to install a trail.

4. West Billings Neighborhood Plan

In the West Billings Neighborhood Plan this subdivision, being a county subdivision, does not meet a great number of the guiding principles as may be with a city subdivision. The nearest city water lines are at Shiloh Road and Hesper Road, a 1.33 mile distance. A sewer line is in Hesper Road, but it is 0.67 miles away. This makes it difficult to build density without either city water or sewer to connect onto. They are proposing large lot residential to match the Whitehorse 1st Filing to the east.

This development does not leapfrog, Policy LU 3.2. This filing of Whitehorse connects directly with first filing of Whitehorse subdivision. They share a common lot line and will have connections within the subdivisions. They are providing connectivity to have as few connections to a major arterial, Hesper Road, as possible. This will allow those living within the neighborhood to walk or bike between the two filings without going onto an arterial street.

D. Does the subdivision conform to the Montana Subdivision and Platting Act (MSPA) and to local subdivision regulations? [MCA 76-3-608 (3) (b) and Section 3.2 (3) (a) YCSR]

The proposed subdivision meets the requirements of the MSPA and the YCSR. The subdivider and the local government have complied with the subdivision review and approval procedures that are set forth by local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [Section 4.8 (C) and 4.9 (C), YCSR]

The subdivision must receive approval from the MDEQ prior to any building construction on each lot. The new parcels will each have wells and septic systems. These individual systems will be approved by MDEQ before final plat.

F. Does the proposed subdivision meet any applicable Zoning Requirements? [Section 3.2 (H) (3) (e), YCSR]

The land for the proposed subdivision is zoned Rural Residential 1 (RR1) within the County Zoning Jurisdiction. They do meet the requirements of zoning with lot sizes that are over 1 acre in size and under 3 acres. This meets the requirements of zoning.

G. Does the subdivision provide for necessary planned utilities? [MCA 76-3-608 (3) (c) and Section 3.2 (H) (3) (b), YCSR]

The applicant will coordinate with private utility companies to provide the required easements. The applicant is showing utility easements along the lot frontages.

H. Does the proposed subdivision provide for Legal and Physical Access to all lots? [MCA 76-3-608 (3) (d) and Section 3.2 (H) (3) (c) (d), YCSR]

Legal and physical access will be provided from a proposed road within the subdivision, Sea Biscuit Way. There is also a road, currently labeled Road A, that runs north and south within the subdivision. Road A will be named before preliminary plat takes place. Both of these internal roads will provide legal and physical access to the proposed lots in the subdivision.

CONCLUSIONS OF FINDINGS OF FACT

- This subdivision does not create adverse impacts that warrant denial of the subdivision.
- Impacts to agriculture, agriculture water user facilities, local services, public health and safety, the natural environment, and wildlife should be minimal, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

RECOMMENDATION

The Planning Board is forwarding a recommendation of conditional approval to the Board of County Commissioners for the preliminary plat of Whitehorse Estates

Subdivision, 2nd Filing, approve the variance requests and adopt the Findings of Fact as presented in the staff report.

Variance Request – Right-of-Way Width
Whitehorse Estates Subdivision, 2nd Filing

Whitehorse Estates Subdivision, 2nd Filing is a 13-lot major subdivision proposed between South 48th Street West and 56th Street West, along Hesper Road, just west of Whitehorse Estates Subdivision, 1st Filing. As part of the proposed subdivision, a variance from **Section 4.6.B.7** of the Yellowstone County Subdivision Regulations is requested. The section outlines the minimum right-of-way required to be dedicated as 60'. Table 4.6.C.1 outlines the required right-of-way width for different road functional classifications. South 52nd Street West is designated as a Future Collector according to the Roadway Functional Classification Map. The Yellowstone County Subdivision Regulations do not specify required right-of-way dedications for these roadways, as such, it is assumed a Minor Arterial with 2 lanes will be substituted. This roadway requires 80' right-of-way dedication and 44' road width according to Table 4.6.C.1. The proposed subdivision is requesting approval to dedicate 40 feet of right-of-way for South 52nd Street West at this time, consistent with the right-of-way previously dedicated by adjoining subdivisions to the north. The proposed right-of-way configuration preserves the ability for the roadway to be expanded to the Future Collector standard, with the remaining right-of-way anticipated to be dedicated upon future development of the adjacent property to the west. As such, the requested variance represents an interim approach that accommodates the current phase of development while preserving the future functionality of the roadway.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not be detrimental to the public health, safety, or general welfare, nor injurious to adjoining properties. A 40-foot right-of-way dedication is proposed along the subdivision boundary for the future construction of 52nd Street West, in lieu of the minimum 60-foot width or 80-foot width associated with the assumed Minor Arterial standards. This proposed right-of-way width is consistent with the subdivisions to the north including Espy Subdivision, Bridle Creek Estates, and Diamond Falls Subdivisions, which have already dedicated 40 feet, and will maintain continuity while avoiding irregular roadway alignments that could create future safety or design concerns. The variance will not negatively impact access to adjacent properties or future connectivity and avoids the dedication of excess right-of-way that is not aligned with existing conditions, supporting efficient land use while maintaining safe and functional transportation infrastructure.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

Strict application of the 60-foot or 80-foot right-of-way requirement would create an undue hardship due to the existing conditions surrounding the property, namely the previously dedicated right-of-way north of the subdivision have previously been dedicated as 40-feet wide. Requiring the additional width would reduce land available for the development to allow placement of wastewater treatment appurtenances with proper setbacks to property lines, individual drinking water wells and stormwater facilities. Strict enforcement of the regulation would therefore impose an unnecessary burden on the property owner without providing a

proportional public benefit, particularly given the ultimate roadway can still be accommodated through future right-of-way dedication associated with development of adjacent properties to the west.

3. The variance will not result in an increase in taxpayer burden.

The requested variance will not result in an increase in taxpayer burden. The proposed 40-foot right-of-way and 28-foot roadway (24-foot asphalt with 2-foot gravel shoulders, and a borrow ditch along the east edge of the roadway) section will reduce the amount of pavement and infrastructure required, thereby lowering long-term construction and maintenance costs for a roadway that will only be utilized by lot owners within the subdivision at this time. The design remains sufficient to serve anticipated traffic volumes and accommodate residential access, emergency services, and utility infrastructure. The proposed design also maintains consistency with existing adjacent right-of-way dedications and roadway improvements, thereby avoiding irregular roadway transitions or unnecessary reconstruction. In addition, the proposed right-of-way configuration preserves the ability for future roadway widening and additional right-of-way dedication to occur as adjacent properties to the west develop. As such, the requested variance represents an efficient and proportional infrastructure improvement approach that accommodates current development needs without creating additional public financial obligations.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The requested variance will not place the subdivision in nonconformance with any adopted zoning regulations or the Growth Policy. The property is zoned RR1 and the proposed subdivision complies with all applicable Yellowstone County zoning requirements, including lot size, use, and development standards. The variance request is limited to right-of-way width and does not affect the underlying zoning designation or the overall consistency of the subdivision with the County's Growth Policy.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The proposed alternative design is equally effective in meeting the intent of the required improvements. The proposed 40-foot right-of-way dedication and interim roadway section, consisting of 24 feet of paved asphalt with 2-foot gravel shoulders on each side, and a borrow ditch, will adequately accommodate anticipated traffic volumes associated with the proposed subdivision, provide safe two-way vehicular traffic, and allow for emergency access and utility services. The proposed design is also consistent with the existing right-of-way dedications and roadway improvements within adjacent subdivisions to the north, thereby maintaining continuity within the established roadway and avoiding irregular roadway transitions. In addition, the proposed right-of-way configuration preserves the ability for the future collector roadway improvements, additional right-of-way dedication, and roadway widening to occur upon future development of the adjacent property to the west. Accordingly, the proposed alternate design satisfies the safety, accessibility, connectivity, and long-term roadway functionality without requiring full right-of-way dedication at this time of development.

Variance Request – Road Width
Whitehorse Estates Subdivision, 2nd Filing

Whitehorse Estates Subdivision, 2nd Filing is a 13-lot major subdivision proposed between South 48th Street West and 56th Street West, along Hesper Road, just west of Whitehorse Estates Subdivision, 1st Filing. As part of the proposed subdivision, a variance from **Table 4.6.C.1** of the Yellowstone County Subdivision Regulations is requested. This table outlines the required road widths for different road functional classifications. South 52nd Street West is designated as a Future Collector according to the Roadway Functional Classification Map. The Yellowstone County Subdivision Regulations do not specify required road widths and right-of-way dedications for Collector roadways, as such, it is assumed a Minor Arterial with 2 lanes will be substituted. This roadway requires 80' right-of-way dedication and 44' road width. This variance is requesting acceptance of South 52nd Street West be constructed with an interim roadway section of consisting of 24' of paved asphalt with 2' gravel shoulders on each side within the proposed dedicated 40' right-of-way. The proposed roadway section is intended to closely match Yellowstone County's typical roadway standards while accommodating the proposed right-of-way constraints. The design also preserves the ability for South 52nd Street West to be expanded to the Future Collector roadway standard, with the remaining right-of-way dedication and roadway improvements anticipated to occur upon future development of the adjacent parcel to the west.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not be detrimental to public health, safety, or general welfare, nor injurious to adjoining properties. The proposed roadway, consisting of 24 feet of asphalt with 2-foot gravel shoulders on each side, will adequately accommodate anticipated traffic volumes, provide safe two-way travel, and allow for emergency access and utility placement. The proposed roadway width is consistent with the adjoining property to the north, which has dedicated a 40-foot right-of-way with the road yet to be constructed. Constructing a 28-foot roadway within this right-of-way maintains alignment with existing improvements while avoiding unnecessary constriction or irregularities, thereby preserving safe, functional, and efficient transportation infrastructure. Additionally, the proposed roadway width is in alignment with residential roadways utilized throughout Yellowstone County, which South 52nd Street West will function as until such time that undeveloped properties to the west and north of Whitehorse Estates 2nd Filing are developed and additional right-of-way and road width added by subsequent developers.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

Strict enforcement of the standard roadway width would create an undue hardship due to the existing conditions of the property and surrounding development, including previously dedicated right-of-way immediately north of Whitehorse Estates Subdivision 2nd Filing in Espy Subdivision and Diamond Falls Subdivision; with neither subdivision having constructed a 44-foot wide roadway as part of development. Espy Subdivision appears to have constructed a

minimal width (~16' gravel access) within the 40-feet of dedicated right-of-way, and Diamond Falls appears to have constructed a 24-foot wide asphalt roadway (what is being requested with this variance) within the 40-foot dedicated right-of-way. Requiring the full standard roadway width within the right-of-way of Whitehorse Subdivision 2nd Filling would create a future scenario of meandering road centerlines based on previously dedicated and constructed roadways as well as future dedicated right-of-way of the properties to the west. Additionally, requiring a full width roadway (44-foot wide) would reduce developable land and complicate the subdivision layout regarding necessary setbacks from drainfields and individual water wells, without providing a proportional public benefit. The proposed interim roadway section is capable of safely accommodating anticipated traffic volumes and maintaining functional transportation access until such time as the adjacent property to the west are developed and the ultimate collector roadway improvements are completed by subsequent developers.

3. The variance will not result in an increase in taxpayer burden.

The requested variance will not result in an increase in taxpayer burden. The proposed interim roadway section, consisting of 24 feet of paved asphalt surfacing with 2-foot gravel shoulders on each side, is appropriate for the anticipated traffic volumes associated with the proposed subdivision and will provide safe and functional access for the residents of Whitehorse Subdivision (only residents who will utilize the roadway until future development occurs) and emergency services. The proposed roadway design also maintains consistency with adjacent roadway improvements and preserves the ability for future roadway widening and additional right-of-way dedication as surrounding properties develop. By constructing a roadway section that is proportional to the current level of development while accommodating future expansion, the proposed variance avoids unnecessary over-construction and promotes efficient use of infrastructure without creating additional public financial obligations.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The requested variance will not place the subdivision in nonconformance with any adopted zoning regulations or the Growth Policy. The property is zoned RR1, and the subdivision complies with all applicable Yellowstone County zoning requirements, including lot size, use, and development standards. The variance pertains solely to the constructed roadway width and does not affect the underlying zoning designation or the subdivision's overall consistency with the County's Growth Policy.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The proposed alternative roadway design is equally effective in achieving the objectives of the required roadway improvements. The proposed interim roadway section, consisting of 24 feet of paved surfacing with 2-foot gravel shoulders on each side, will adequately accommodate anticipated traffic volumes associated with the proposed subdivision, provide safe two-way vehicular traffic, and maintain sufficient access for emergency vehicles, utility providers, and service vehicles. The proposed design also maintains continuity with the adjacent roadway improvements and existing right-of-way conditions to the north, thereby promoting a coordinated and functional roadway network. In addition, the proposed roadway section preserves the ability for future expansion to the Future Collector roadway standard as adjacent properties develop and

additional right-of-way is dedicated. As such, the alternate design satisfies the intent of the Yellowstone County roadway standards while avoiding unnecessary pavement and preserving developable land.

Variance Request – Through Lots
Whitehorse Estates Subdivision, 2nd Filing

Whitehorse Estates Subdivision, 2nd Filing is a 13-lot major subdivision proposed between South 48th Street West and 56th Street West, along Hesper Road, just west of Whitehorse Estates Subdivision, 1st Filing. As part of the proposed subdivision, a variance from **Section 4.4.G**. This section states double frontage lots are allowable only when necessary due to topography and when a no access strip is provided. By providing a cul-de-sac in the middle of the development, thus creating the through lots, we can ensure the lots developed within the subdivision have access from a local road, as opposed to a future collector roadway.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not adversely affect public health, safety, or general welfare, nor will it be injurious to adjoining properties. The implementation of a one-foot-wide no-access easement along the frontage of 52nd Street West will effectively prevent uncontrolled vehicular access to the collector roadway, thereby preserving safe traffic operations and minimizing potential conflicts. This measure is consistent with the objectives of the Yellowstone County Subdivision Regulations to ensure roadway safety while accommodating the specific lot configuration. Furthermore, the variance facilitates orderly development without compromising the rights or safety of neighboring properties or emergency services.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

Strict adherence to the guideline discouraging double-frontage lots would create an undue hardship due to the unique configuration of the property. The affected lots are bounded by both 52nd Street West and western boundary of Whitehorse Estates, First Filing, making strict compliance impractical without significantly reducing lot functionality or creating irregular lot layouts. Applying the regulation in full would limit developable area and constrain the overall subdivision design, with minimal benefit to public safety or welfare.

3. The variance will not result in an increase in taxpayer burden.

The granting of this variance will not result in an increase in taxpayer burden. The proposed lot design, including the one-foot no-access easement, requires no additional public infrastructure beyond what would be necessary for a standard subdivision. Roadway improvements and maintenance responsibilities remain consistent with typical subdivision standards, and the variance avoids unnecessary modifications that could increase construction and long-term maintenance costs.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The granting of this variance will not result in nonconformance with any adopted zoning regulations or the Growth Policy. The subdivision fully complies with the RR1 zoning

requirements and all applicable Yellowstone County Zoning Regulations, including lot size, use, and development criteria.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The proposed alternative design is more effective in achieving the objectives of the subdivision standards. The inclusion of a one-foot no-access easement along 52nd Street West maintains safe and orderly traffic flow, preserves lot usability, and prevents direct access to the collector roadway, consistent with the intent of the regulations. This design allows for a functional and efficient subdivision layout while maintaining compliance with safety, accessibility, and connectivity goals. As such, the alternative design satisfies the purpose of the required improvements without compromising the safety or functionality of the roadway network.

Variance Request A
Whitehorse Estates Subdivision, 2nd Filing

Whitehorse Estates Subdivision, 2nd Filing is a proposed major subdivision in Yellowstone County. As part of the proposed subdivision, the subdivider is requesting a variance from Section 4.6.B.7 of the Yellowstone County Subdivision Regulations regarding the right-of-way width along S 52nd St W. The regulations require subdividers to provide entire right-of-way width if they cannot get required right-of-way from the adjacent property owner. They are asking to provide half of the road width with this variance.

Staff, which include Planning, Public Works and County Legal, are recommending approval of the variance. Considering existing right-of-way dedication to the north, in the future should the property to the west develop, they will be required to dedicate the second half of S 52nd St W. If this subdivision dedicates 80 feet for S 52nd St W on their property it will put road dedication 40 feet farther to the east compared to the dedication to the north. When new developments to the northwest dedicate the their required 40 feet to the existing 40 feet of dedication, this will put the new dedication 40 feet to the west of the right of way from this subdivision, if they are required to provide 80 feet all on their land. The road, S 52nd St W, will not line up with the road to the north when the road is built in the future.

County Public works provided a statement concerning the proposed variance.

It is my understanding that Performance Engineering is asking for a variance from right of way width, but they intend to construct the road to a county standard. After reviewing the request, the surrounding area, considering alignment, and future opportunity to obtain additional right of way to the west, Public Works is not opposed to the request.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties. This is requested to match the right of way that has been allowed in the past on subdivisions to the north, Epsy Subdivision, Bridle Creek Estates Subdivision, and Diamond Falls Subdivision. This subdivider is planning on putting a full-width County standard road within the half right-of-way they would like to provide. They are planning on building a 24-foot-wide paved surface road with two-foot shoulders from Hesper Road to the northwest corner of the subdivision. By allowing the narrower right-of-way to match right-of-way to the north, it will align with existing right-of-way. This will limit paved areas from being aligned in different locations within various dedicated right-of-way when they are built in the future.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There are no particular physical surroundings or topography that would restrict the subdivider from providing the entire 80-foot-wide right-of-way on his property. County Subdivision Regulations require the applicant to either obtain half of the required right-of-way from the

neighboring property owner or provide the entire right-of-way on their own property. According to information provided by the subdivider's agent, the neighbor to the west has no interest in providing any road right-of-way. The subdivider is asking to dedicate half the needed right-of-way similar to what has been done to the north. The difference being the subdivider is proposing to build a county standard road within the 40 foot dedication. 24 foot wide paved area with 2 foot gravel shoulders on each side.

3. The variance will not result in an increase in taxpayer burden.

A half road width will not increase the taxpayer burden. An RSID will be created to maintain public roads as is standard practice in Yellowstone County.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The zoning is Rural Residential 1. Zoning does not have any regulatory input on roads within the county.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The alternative design is to have a road half right-of-way with a standard 24 foot paved surface road built to Yellowstone County road regulations.

Variance Request B
Whitehorse Estates Subdivision, 2nd Filing

Whitehorse Estates Subdivision, 2nd Filing is a proposed major subdivision in Yellowstone County. As part of the proposed subdivision, the subdivider has requested a variance from Table 4.6.C.1 of the Yellowstone County Subdivision Regulations for constructed road width is being requested, regarding the constructed roadway width for S 52nd Street West. This variance is asking to build a standard 24-foot-wide road with two-foot shoulders on each side.

Staff, which include Planning, Public Works and County Legal, are recommending approval of the variance. Should Variance Request A be granted the developer is proposing that they build a standard county road, 24-foot paved surface with 2-foot-wide gravel shoulders on each side. At the current time this road will be only used by those that live in the Whitehorse Subdivision 1st and 2nd Filings. In the future should the land to the west be developed, they will provide the second half of the right-of-way and widen the road to accommodate the additional traffic.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties. The developer is proposing a roadway, consisting of 24 feet of asphalt with 2-foot gravel shoulders on each side. This road width is a Yellowstone County standard road width, will adequately accommodate anticipated traffic volumes, provide safe two-way travel, and allow for emergency access and utility placement. The proposed roadway width is consistent with property to the north in Epsy Subdivision, Bridle Creek Estates Subdivision, and Diamond Falls Subdivision. These subdivisions have dedicated a 40-foot right-of-way for roads that will be constructed in the future. Constructing a 28-foot roadway within this requested right-of-way maintains alignment with existing improvements while avoiding unnecessary constriction or irregularities, thereby preserving safe, functional, and efficient transportation infrastructure. Additionally, the proposed roadway width is in alignment with residential roadways utilized throughout Yellowstone County, which South 52nd Street West will function as, until such time that undeveloped properties to the west and north of Whitehorse Estates 2nd Filing are developed and additional right-of-way and road width will be added by subsequent developers. Once there is development to the west and north additional road right-of-way will be added and the road can be widened out to function as a collector.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There are no particular physical surroundings or topography that would restrict the subdivider from providing the entire 80-foot-wide right-of-way on his property. County Subdivision Regulations require the applicant to either obtain half of the required right-of-way from the neighboring property owner or provide the entire right-of-way on their own property. According to information provided by the subdivider's agent, the neighbor to the west has no interest in providing any road right-of-way. The subdivider is asking to dedicate half the needed right-of-way similar to what has been done to the north. The difference being the subdivider is proposing

to build a county standard road within the 40-foot dedication. 24-foot-wide paved area with 2 foot gravel shoulders on each side.

3. The variance will not result in an increase in taxpayer burden.

A half road width will not increase the taxpayer burden. An RSID will be created to maintain public roads as is standard practice in Yellowstone County.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The zoning is Rural Residential 1. Zoning does not have any regulatory input on roads within the county.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The alternative design is to have a road half right-of-way with a standard Yellowstone County Road built within that right-of-way.

Variance Request C
Whitehorse Estates Subdivision, 2nd Filing

Whitehorse Estates Subdivision, 2nd Filing is a proposed major subdivision in Yellowstone County. As part of the proposed subdivision, a variance from Section 4.4.G. This section states double frontage lots are allowable only, when necessary, due to topography and when a no access strip is provided. By providing a cul-de-sac in the middle of the development, thus creating the through lots, we can ensure the lots developed within the subdivision have access from a local road, as opposed to a future collector roadway. This variance is supported by staff.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

The granting of this variance will not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties. Granting this variance will be beneficial to safety and general welfare of the public. By requiring a 1 foot no access strip along S 52 St W this will require lot owners to access internal roads and decrease future conflicts on a main road that is going to be moving a higher volume of traffic. This way it helps with public health and safety.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There are no particular physical surroundings or topography that would restrict the separation of lots and the S 52nd St W. S 52nd St W is proposed to be a collector street in the future. County policy has always been to restrict access to higher traffic streets to avoid unnecessary traffic conflicts. Allowing multiple accesses onto a higher traffic street creates multiple conflicts and increases the likelihood of car accidents. Strict adherence to the subdivision regulations would discourage double frontage lots in subdivisions. There are many subdivisions in Yellowstone County and the City of Billings with double frontage and the solution has been to require a 1 foot no access strip to control traffic access onto higher traffic roads. Strict compliance with subdivision regulations is impractical without significantly reducing lot functionality or creating irregular lot layouts. Applying the regulation in full would limit developable area and constrain the overall subdivision design, with minimal benefit to public safety or welfare.

3. The variance will not result in an increase in taxpayer burden.

Granting this variance will not increase the taxpayer burden. Restricting access to an internal road will be a safety measure that will help with people being less likely to be in an auto accident.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

The zoning is Rural Residential 1. Zoning does not have any regulatory input on roads within the county.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The alternative design is to have a 1 foot no access strip to require all driveways to be from internal local subdivision roads.

Meeting Date: 09/10/2026

Title: LAG Agreement - Lockwood Sidewalk

Submitted By: Monica Plecker, Public Works Director

TOPIC:

Public Works - LAG Agreement - Lockwood Sidewalk

BACKGROUND:

The Lockwood Pedestrian Safety District will be installing sidewalks along Johnson Lane through funds obtained through the Transportation Alternatives program (federal funds). Yellowstone County will oversee the project locally and is required to enter into an agreement with MDT demonstrating that all federal requirements will be met. The agreement between MDT and Yellowstone County establishes the responsibilities and duties of the Parties with respect to project activities and ensure that federal and state requirements are met in fulfilling its obligations to the FHWA and for the Project to remain eligible for state and/or federal funding, The last agreement like this was entered into by the County and MDT in 2024 for the construction of sidewalks along Old Hardin Road.

This project will construct two portion of sidewalk shown in exhibit B. These are sidewalk gaps. The project was awarded \$260,000 in Transportation Alternative funds. The project requires \$34,961 in local match which is being provided by the Lockwood Pedestrian Safety District.

RECOMMENDED ACTION:

Discuss.

Attachments

Agreement

Attachment A

Funding, Construction, Maintenance and Local Agency Guidelines (LAG) Agreement

**Federal Project ID To be Determined
Johnson Lane Sidewalks
UPN 10721000
MDT Contract Number 114346**

This Agreement by and between Yellowstone County (Local Agency) and the Montana Department of Transportation (MDT) (collectively Parties) establishes the responsibilities and duties of the Parties with respect to Project activities including the design and construction of a sidewalk within the City of Lockwood, Montana.

Whereas, the construction will be accomplished through Uniform Project Number 10721000, Federal-Aid Project Number Federal Project ID To be Determined titled Johnson Lane Sidewalks (Project) within the City of Lockwood and further described in the Project Location Map in Attachment “B”; and,

Whereas, Federal Highway Administration (FHWA) funds available through the Transportation Alternatives Program will be used to pay for the construction, the Local Agency and MDT must ensure that federal and state requirements are met for the Project to remain eligible for state and/or federal funding; and,

Whereas, the Project lies on the designated Urban Highway System designated by the Montana Transportation Commission and MDT as per Mont. Code Ann. § 60-2-126; and,

Whereas, MDT and Local Agency recognize the need to construct the Project, the Local Agency deeming it to be a valuable and beneficial consideration, and the Parties are willing to share in its costs in accordance with Article VI, Funding.

Now, therefore, the Parties agree as follows:

ARTICLE I. FEDERAL SUBRECIPIENT AWARD INFORMATION

All information not included below will be provided by MDT in a supplemental document when the Local Agency submits its first request for reimbursement.

1. Subrecipient's name: Yellowstone County;
2. Local Agency's Unique Entity ID: FNVKTJD3B7C1;
3. Federal Award Identification Number (FAIN): _____;
4. Federal Award Date: _____;
5. Subaward Period of Performance Start and End Date: _____;
6. Subaward Budget Period Start and End Date: _____;
7. Amount of Federal Funds Obligated in the subaward: _____;

8. Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity, including the current financial obligation: _____;
9. Total Amount of the Federal Award committed to the subrecipient by the pass-through entity: _____;
10. Federal Award Project Description: Transportation Alternatives;
11. Awarding Agency: FHWA;
12. Assistance Listing Number: 20.287;
13. This Project is not for research and development; and
14. Indirect Cost Rate: If the Local Agency chooses to claim an indirect cost rate for reimbursement, it must do so in accordance with 2 CFR Part 200.414 and Section E, Appendices III-VIII. The Local Agency may use the current 15% de minimis indirect cost rate, unless the Local Agency has an indirect cost rate approved by a cognizant agency and submits a copy of the indirect cost approval letter to MDT.

ARTICLE II. GENERAL OBLIGATIONS OF MDT

1. MDT will provide appropriate and timely input during the Project's development.
2. If the Local Agency does not fulfill its maintenance requirements as stated herein, MDT may complete the required maintenance and seek compensation from the Local Agency. In doing so, MDT must first provide notice to the Local Agency, allowing reasonable time to complete any such maintenance. If MDT performs such maintenance under this section, it must provide detailed invoices of such costs to the Local Agency.
3. MDT may complete any roadway or right-of-way maintenance required due to a public emergency and seek compensation from the Local Agency for any costs incurred. In doing so, MDT may first provide notice to the Local Agency, when possible, allowing time to complete any such maintenance. If MDT performs maintenance under this section, it must provide detailed invoices of such costs to the Local Agency.

ARTICLE III. GENERAL OBLIGATIONS OF THE LOCAL AGENCY

1. The Local Agency will design, award, and administer the contract to construct the Project.
2. The Local Agency will provide MDT opportunities to participate in the Project's development, including invitation to the final inspection of the Project.
3. The Local Agency agrees to conform in all regards to Mont. Code Ann. Title 61, Chapter 8, and will not take any action, by enacting an ordinance or otherwise, in contradiction of the traffic laws in Mont. Code Ann. Title 61, Chapter 8.

4. The Local Agency is responsible for issuing all future encroachment and approach permits and ensuring the resulting actions do not interfere with roadway or pedestrian travel or decrease safety.
5. The Local Agency will conduct all on-system roadway maintenance and the Project-Specific Feature maintenance identified in Article V.
6. The Local Agency will continue to enforce the ordinances, laws and/or regulations necessary and essential for the operations of the Project.
7. The Local Agency, at its sole expense, must obtain and maintain all federal, state and local building permits or other permits of any type or nature required by a governing authority, except as noted in this Agreement.
8. The Local Agency agrees to regulate utility occupancy on the right-of-way of this roadway in conformance with occupancy regulations that comply with or are more restrictive than the requirements of the Administrative Rule of Montana 18.7.201 through 18.7.231, governing "Right of Way Occupancy by Utilities."
9. The Local Agency agrees it will assume full and complete responsibility for the Project, including any right-of-way or easements acquired for the Project and ownership and responsibility for any permits obtained for the Project.

ARTICLE IV. PROJECT-SPECIFIC CONSTRUCTION PERMITS OR PROVISIONS

1. Small Municipal Separate Storm Sewer System (MS4) Permit

- a. MDT concludes, and the Local Agency agrees, the Project work is designed in compliance with applicable Small MS4 Permit requirements.
- b. The Local Agency agrees to operate, monitor and maintain storm water management features in compliance with applicable MS4 requirements.

ARTICLE V. PROJECT-SPECIFIC FEATURES

1. Sidewalks

- a. Upon completion of the Project by the Local Agency and its contractor, the Local Agency agrees to maintain and repair the sidewalks within the Project limits and ensure they are safe and functional for the traveling public.

2. Local Agency Signs

- a. Upon completion of the Project by the Local Agency and its contractor, the Local Agency agrees that it is responsible, at no cost to MDT, to maintain the Local Agency signs (e.g., trail signs, parking signs, etc.) within the Project.
- b. For the purposes of this Agreement, "maintenance of signs," is defined as: the inspection, cleaning, repair and replacement of signs damaged through weathering, vandalism, wind, or other means.

ARTICLE VI. FUNDING

1. The Local Agency agrees to pay the requisite 13.42% non-federal matching funds for the Project and associated indirect costs up to the allowable overrun percentage in accordance with Tables 1 and 2 below.
2. The Local Agency is responsible for 100% of non-federal aid eligible costs and for the payback of state and federal funds expended on non-federal aid eligible elements of the Project, if required.
3. It is understood and agreed between the Parties that Mont. Code Ann. § 17-1-106 requires any state agency that receives non-general funds, including MDT, to identify and recover its indirect costs. These costs are in addition to the direct Project costs. Indirect costs will be recovered on MDT charges to the Project at the rate for the fiscal year in which the charges are incurred. MDT will not recover indirect costs on Local Agency charges to the Project. See Table 1 below.
4. The Local Agency will be billed in advance for its share of MDT charges, including indirect costs. The billing for the Project's preliminary engineering (PE) phase for MDT charges will be sent within 30 days of this Agreement being signed. The billing for the Project's Construction Engineering (CE) and Construction (CN) phases will be sent no fewer than sixty (60) days prior to the Project's anticipated advertisement for letting.
5. The Local Agency will submit payment to MDT within thirty (30) days of billing. Payments to this Project will be provided to MDT in the form of a check. The payment(s) should be sent to MDT at:

Montana Department of Transportation
Attention: Accounting Processing Section
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

6. MDT will not submit programming requests to FHWA for individual Project phases until the required local funds have been transferred to MDT. The Project funding for CE & CN phases must be agreed upon by the Local Agency and MDT prior to the project advancing past the PE phase. The Local Agency shall not advertise for construction until the Project has been authorized by FHWA for the funds to be reimbursable.
7. If payment is not made by the Local Agency within the thirty (30) day period, interest on the unpaid amount will accrue at the rate of 10% per year and continue to accrue until paid in full.

8. MDT will not participate in any future funding Agreement with the Local Agency until full payment, including any interest, is received from the Local Agency.
9. Local Agency agrees that if the Local Agency terminates Project development at any time, it will reimburse MDT for all costs incurred by MDT up to the date of the stoppage, including any required payback of Federal funds already expended on the Project.
10. The current Project cost estimate, including IDC and inflation, is shown in Table 1. This estimate will be updated, until Project closeout, at Project milestones and/or as more refined estimates become available. Any such revisions will be incorporated into this Agreement via Amendment, in accordance with the General Terms and Conditions.
11. The Local Agency's Project Manager will inform the MDT point of contact as soon as possible of anything that it appears will result in a cost increase and will discuss with MDT the need for any possible additional funds, alternative designs, and/or reduction of the Project's scope and will consider MDT's comments and concerns about the additional costs and/or alteration in scope or design. None of this will prevent, delay, or excuse the Local Agency from paying for any additional costs deemed necessary by MDT.
12. The Local Agency agrees to award the Project using Federal and Local Agency matching funds, provided that the lowest responsive bid does not exceed the allowable overrun percentage shown in Table 2.
13. If the lowest responsive bid exceeds the allowable overrun percentage, as listed in Table 2, the Local Agency will contact MDT to determine a funding solution agreeable to both Parties.
14. The Parties understand that it is possible that the estimated cost of the Project's construction may be exceeded once the Project has begun.

Table 1 - Project Cost Estimate

Project Phase	Total Cost of Phase	Federal Funds	State Matching Funds	Local Agency Matching Funds	Local Agency Additional Funds
Total Preliminary Engineering (PE)	\$60,000	\$51,948	\$0	\$8,052	\$0
PE - Local Agency	\$45,000	\$38,961	\$0	\$6,039	\$0
PE - MDT	\$15,000	\$12,987	\$0	\$2,013	\$0
Construction (CN)	\$165,000	\$142,857	\$0	\$22,143	\$0
CN - Local Agency					
Total Construction Engineering (CE)	\$33,529	\$29,029	\$0	\$4,500	\$0
CE - Local Agency	\$28,500	\$24,675	\$0	\$3,825	\$0
CE - MDT	\$5,029	\$4,354	\$0	\$675	\$0
Right-of-Way (R/W)	\$0	\$0	\$0	\$0	\$0
R/W - Local Agency					
Incidental Construction (IC)	\$0	\$0	\$0	\$0	\$0
IC - Local Agency					
Subtotal	\$238,500	\$206,493	\$0	\$32,007	\$0
Local Agency					
Subtotal	\$20,029	\$17,341	\$0	\$2,688	\$0
MDT					
IDC (9.90%)	\$1,983	\$1,717	\$0	\$266	\$0
Grand Total	\$260,512	\$225,551	\$0	\$34,961	\$0

The above costs are estimates and include inflation and current IDC. The rows above are labeled with "MDT" and "Local Agency." The MDT rows are costs originating from MDT to provide oversight. The Local Agency rows are costs originating from the Local Agency for project development, construction, and construction engineering. Both MDT and Local Agency rows are billed to Federal Funds (TA) and Local Agency Matching Funds. The Indirect Cost Rate (IDC) only applies to the MDT rows.

Table 2 - MDT Guidelines for Awarding Construction Agreements
(Used to determine allowable overrun cost participation based on construction bid award amount)

LOWEST RESPONSIVE BID	ALLOWABLE OVERRUN %
UNDER \$50,000	30%
\$50,000 - \$200,000	25%
\$200,000 - \$500,000	20%
\$500,000 - \$2,000,000	15%
OVER \$2,000,000	10%

ARTICLE VII. GENERAL OBLIGATIONS OF THE PARTIES

1. The Local Agency and MDT agree that the Project is a pilot project for a revised Local Agency Guidelines (LAG) process and will utilize the guidance set forth in the existing MDT LAG Manual (September 2013) where applicable and practical. The Local Agency and MDT agree to work in partnership to resolve any requirements of the LAG Manual that are not practical or feasible in the delivery and administration of this Project.
2. The Parties shall manage the delivery of the Project phases and Project areas of responsibility as identified below.
 - a. **Project Phases:**
 - i. [PL] Program Development (Planning) - **MDT**
 - i. [PE] Project Development (NEPA/MEPA, Design, Permitting) - **Local Agency**
 - ii. [RW] Right of Way Acquisition – **Local Agency**
 - iii. [IC] Utilities – **Local Agency**
 - iv. [CN/CE] Advertising Bid & Award – **Local Agency**
 - v. [CN & CE] Construction Contract Admin and Closeout - **Local Agency**
 - b. **Local Agency Project Area Responsibilities:**
 - i. Consultant selection and contract administration;
 - ii. Design;
 - iii. Environmental document preparation;
 - iv. Advertisement, bid, and award;
 - v. Civil Rights project management oversight, which includes compliance with the Americans with Disabilities Act (ADA), Disadvantaged Business Enterprise (DBE), Equal Employment Opportunity (EEO), On the Job Training (OJT), and Title VI Programs; and
 - vi. Construction contract administration.
 - c. **MDT Project Area Responsibilities:**
 - i. Civil Rights reporting for ADA, DBE, EEO, OJT, and Title VI Programs;
 - ii. Review of Environmental documents and/or submittal of certification to FHWA that the action qualifies for a Categorical Exclusion (CE) for projects as allowed in section IV.A. of the Programmatic Agreement Regarding the Processing of Action Classified as Categorical Exclusions for Federal-Aid Highway Projects and Amendment 1;
 - iii. Final Environmental certifications;
 - iv. Final certification of Right of Way (RW) transactions;
 - v. Final certification of Utilities;

- vi. Requests for authorization of FHWA funds;
 - vii. Public interest findings determinations; and
 - viii. Project final acceptance.
- d. Federal Highway Administration (FHWA) Project Area Expectations:
- i. Review of National Environmental Policy Act (NEPA) environmental documents as described in Section IV.B of the Programmatic Agreement Regarding the Processing of Action Classified as Categorical Exclusions for Federal-Aid Highway Projects and Amendment 1 and coordination of Endangered Species Act (ESA) consultation with USFWS;
 - ii. Review of MDT's ADA, DBE, EEO, OJT, and Title VI programs;
 - iii. Authorization of FHWA funds;
 - iv. "Buy America" waiver requests;
 - v. Experimental features and special experimental projects; and
 - vi. Periodic audits of program and specific projects.
3. The Parties agree to the following Project personnel and communication structure:
- a. Project Manager – will be appointed and retained by the Local Agency and is the person with responsible charge as defined in 23 CFR 172.9. The Local Agency may appoint and retain different Project Managers for various Project phases and will inform MDT of any change in Project Management.
 - b. Local Agency Liaison – will be appointed and retained by MDT to provide assistance as requested by the Local Agency. This liaison may be different MDT personnel during the design and construction phases.
 - c. MDT Program Manager – will work directly with the Project Manager and Local Agency Liaison as needed.
 - d. Local Agency Engineer – will provide principal oversight dedicating reasonable support and resources necessary for successful delivery of the Project.
4. Local Agency LAG Obligations
- a. The Local Agency shall track internal costs and Project expenses in an accounting system that can allocate costs by project and can code between allowable and unallowable costs.
 - b. The Local Agency shall provide initial Project budget estimates to MDT broken out by phase and by work planned to be performed with internal Local Agency staff and work planned to be performed by consultants and/or contractors.
 - c. The Local Agency shall present reimbursement requests for the Eligible Costs incurred by Local Agency on behalf of the Project directly to MDT's Local Agency Liaison for review and approval. Such invoices shall identify the

Project, UPN Number, Agreement number, Project phase, amount charged to each phase (e.g., PE, RW, CN), reimbursement request number, and itemize all expenses for which reimbursement is claimed. The Local Agency shall submit invoices to MDT no more often than monthly but at least once every three months, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. The Local Agency shall also include with the invoice a Project progress report or summary that describes work accomplished for the invoicing period, and work expected for the next invoicing period.

- i. Eligible Costs are the Local Agency's actual Project costs that are:
 - 1. Reasonable, necessary and directly incurred in the development of the Project;
 - 2. Documented in accordance with generally accepted accounting principles established by the Governmental Accounting Standards Board; and
 - 3. Eligible or allowed uses of Federal and State of Montana Funds.
 - ii. Eligible Costs may include Indirect Costs (IDC) rates that have been approved by MDT.
 - iii. MDT, in its sole discretion, determines whether a particular cost satisfies the criteria set forth in this Agreement and is an Eligible Cost.
 - iv. The Local Agency may appeal any determination of an Ineligible Cost for further review, upon which, MDT will provide a detailed explanation of the determination, including any statute or program guidelines used to make such determination.
- d. The Local Agency shall have a written policy for the selection of engineering consultants that meets the requirements of 23 CFR 172. The Local Agency may choose to adopt MDT's consultant selection policy, modified (in writing) to be applicable to Local Agency personnel.
 - e. The Local Agency shall meet the requirements of 23 CFR Part 636 and Mont. Code Ann. Title 18 regarding design-build contracts. The Local Agency shall have a written procedure for design-build contracts, if applicable to this Project, or may choose to adopt MDT's design-build guidelines.
 - f. The Local Agency shall develop a Project delivery schedule, and status it no less than on a quarterly basis. The schedule will include milestones of major Project phases (PE, RW, I/C, CN, and CE).
 - g. The Local Agency shall provide notice to MDT when subsequent Project phases (RW, IC, CN, CE) are ready to be programmed. This notice shall be provided at least three weeks prior to needed authorization for the phase to begin.

- h. The Local Agency shall not place or plan to place permanent Project features outside documented public right-of-way. If additional right-of-way (fee acquisition, easement, or temporary permits) are required, a RW phase will be initiated.
- i. The Local Agency shall be financially responsible for any federal payback required as a result of the Local Agency's breach of this Agreement.
- j. The Local Agency shall not begin RW, IC, CE, or CN until the Project NEPA/MEPA document has been signed and approved. The Local Agency is encouraged not to begin final design activities until NEPA/MEPA documents are signed.
- k. If performing these phases, the Local Agency shall be responsible to complete environmental, RW, railroad, and utility certification prior to requesting programming for the construction (CN) phase.
- l. The Local Agency will utilize the Montana Public Works Standard Specifications, MDT Standard Specifications, or any combination thereof, for the administration of the Project, including construction inspection and materials testing.
- m. The Local Agency shall include MDT in preliminary plan reviews and document comment resolutions. MDT's review shall include Americans with Disabilities Act (ADA) compliance, constructability, quantities, materials, and roadway geometrics.
- n. The Local Agency shall develop the Project plans and specifications in accordance with all applicable federal regulations and guidelines, including but not limited to ADA, Public Rights-of-Way Accessibility Guidelines (PROWAG), Manual on Uniform Traffic Control Devices (MUTCD), Buy America/Build America (23 CFR 635.410/2 CFR Part 184) etc.
- o. The Local Agency shall support MDT in delivering this Project in accordance with all federal and state requirements associated with federal funding.

5. MDT LAG Obligations

- a. MDT shall submit Project phase programming requests to FHWA.
- b. MDT shall provide timely cost reimbursements to the Local Agency upon properly completed reimbursement requests.
- c. MDT shall verify the completeness of the NEPA/MEPA documentation and provide a recommendation to the Local Agency when to begin work on final design activities.
- d. MDT shall provide final certification of the environmental, RW, railroad, and utilities, based on information and recommendations provided from the Local Agency.

- e. MDT shall be financially responsible for any federal payback required as a result of MDT's breach of this Agreement.
- f. MDT shall consolidate all Project comments during plan reviews to avoid conflicting direction, as well as strive to provide comments no later than 14 days from the release of an agreed-upon plan package release date.
- g. MDT shall support the Local Agency in its efforts to successfully complete this Project by being responsive and providing guidance as requested.
- h. Upon request, MDT shall promptly provide personnel for a final Project walk-through and completion certification.

ARTICLE VIII. GENERAL TERMS AND CONDITIONS

1. **Term** – The term of this Agreement shall be ten (10) years. After the initial ten (10) year term, this Agreement will renew automatically, for successive one (1) year terms, unless superseded by a new Agreement between the Parties.
2. **Termination** – This Agreement may be terminated by either party if the other party violates or breaches any term, condition, or article of this Agreement and the breaching party has failed to correct (or reasonably initiate correction) within 60 days of receiving notice in writing addressed to the breaching party's representative, of such violation or breach.
3. **Other Agreements** – Other Agreements pertaining to the Project area remain in full force and effect. In the case of a conflict between this Agreement and a previously executed Agreement, the terms of this Agreement apply.
4. **Hold Harmless & Indemnification**
 - a. The Local Agency agrees to protect, defend, indemnify, and hold MDT, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the Local Agency's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of the Local Agency, its agents, or sub-contractors, under this Agreement, except the negligence of MDT.
 - b. The State and MDT agrees to protect, defend, indemnify, and hold the Local Agency, its elected and appointed officials, agents, and employees, while acting within their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by the MDT's employees or third parties on account of personal or bodily injury, death or damage to property, arising out of the acts or omissions of MDT, its agents, or sub-contractors, under this Agreement, except the negligence of the Local Agency.

5. Insurance

- a. General Requirements: Each Party shall maintain for the duration of this Agreement, at its own cost and expense, insurance, a self-funded plan, or risk-pooling agreement covering claims for personal or bodily injury, death, or damage to property that may arise from or in connection with the performance of duties and obligations in this Agreement by each Party, its agents, employees, representatives, assigns, or sub-contractors. This coverage shall cover such claims as may be caused by any negligent act or omission.
 - b. General Liability: Each Party shall purchase and maintain coverage with single and combined single limits for bodily injury, personal injury, and property damage at or exceeding the requirements of Mont. Code Ann. § 2-9-108 to cover such claims as may be caused by or arising out of any negligent acts or omissions in work or services performed under this Agreement, or as established by statutory tort limits as provided under this Agreement or as established by statutory tort limits as provided by a public entity self-insurance program either individually or on a pool basis as provided by Mont. Code Ann. Title 2, Chapter 9.
 - c. Workers' Compensation Insurance: The Local Agency must maintain workers' compensation insurance and require its contractors and its contractor's sub-contractors to carry their own workers' compensation coverage while performing work within MDT right-of-way in accordance with Mont. Code Ann. §§ 39-71-401 and 39-71-405. Proof of compliance must be in the form of worker's compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the Local Agency nor its contractor, subcontractors, and employees are employees of MDT. This insurance/exemption must be valid for the entire Agreement period.
 - d. General Provisions: All coverage must be with a carrier licensed to do business in the State of Montana or by a public entity self-insured program either individually or on a pool basis. Each Party must notify the other immediately of any material change in coverage, such as changes in limits, coverage, change in status of policy, etc. Each Party reserves the right to request complete copies of the other Party's insurance policy or self-insured memorandum of coverage at any time.
6. Public Safety – If any repairs to the elements of the Project must be performed to address or prevent a public hazard, the Local Agency will immediately protect the

area from public access, contact the appropriate MDT Area Maintenance Office, and make reasonable and timely effort to correct or repair the hazard.

7. Invoicing – If MDT incurs any costs resulting from this Agreement, MDT shall be entitled to be compensated for such costs by the Local Agency and the Local Agency shall pay the same within thirty (30) days of its receipt of such invoices.
 - i. Invoices will be sent to:

Yellowstone County
Attn: Russell Burton
Yellowstone County Comptroller
P.O. Box 35003
Billings, MT 59107-5003
406-256-2831
 - ii. Payments shall be made to:

Montana Department of Transportation
Attention: Accounting Processing Section
2701 Prospect Avenue
PO Box 201001
Helena, MT 59620-1001
8. Indirect Costs (IDC) – Mont. Code Ann. § 17-1-106 requires all state agencies, including MDT, which receive non-general funds to identify and recover indirect costs (IDC) in addition to direct project costs. MDT's IDC rate is recalculated annually, as defined in 2 CFR Part 200, Appendix VII. The IDC rate in effect for the fiscal year MDT incurs the costs will be charged to the Local Agency in addition to the direct project costs.
9. Choice of Law and Venue – This Agreement shall be governed by the laws of Montana. The Parties agree that any litigation concerning this Agreement must be brought in the First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees except as otherwise noted in this Agreement.
10. Binding Effect – The benefits and obligations set forth in this Agreement shall be binding upon, and inure to the benefit of, the respective successors, administrators and assigns of the Parties.
11. Relationship of Parties – Nothing contained in this Agreement shall be deemed or construed (either by the Parties hereto or by any third party) to create the relationship of principal and agent or create any partnership joint venture or other association between the Parties.
12. Non-Discrimination – The Local Agency will require that during the performance of any work arising out of this Agreement, the Local Agency for itself and its assignees and successors shall comply with all applicable non-discrimination regulations set forth in Attachment "A."

13. ADA – MDT requires that any construction or maintenance resulting from this Agreement must include appropriate pedestrian facilities that meet or exceed current MDT standards for accessibility as set forth by the United States Department of Justice 2010 ADA Standards for Accessible Design, United States Access Board Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, and MDT's Detailed Drawings, 608 series.
14. Audit – The Local Agency grants to the Legislative Auditor and the Legislative Fiscal Analysts the right, without prior notice and during normal business hours, to audit, at their own costs and expense, all records, reports, and other documents, the Local Agency maintains in connection with this Agreement.
15. Utilities – This Agreement is subject to the right of any private or public utility entity now lawfully occupying the right-of-way to continue to operate and maintain utility facilities thereupon. Copies of existing utility permits may be obtained from the MDT District Utility Agent.
16. Amendment and Modification – This Agreement may be modified or amended only by written Amendment signed by the Parties. In addition to the terms and conditions contained herein, the provisions of any Amendment may be incorporated and made a part hereof by this reference in the terms of the Amendment so provided. In the event of any conflict between the terms and conditions hereof and the provisions of any Amendment, the provision of the Amendment shall control, unless the provisions thereof are prohibited by law.
17. Access and Retention of Records – The Local Agency agrees to provide MDT, the State of Montana Legislative Auditor, or their authorized agents access to any records necessary to determine compliance with the Agreement. The Local Agency agrees to create and retain records supporting this Agreement for a period of three (3) years after the completion date of the Agreement or the conclusion of any claim, litigation or exception relating to the State of Montana or a third party.
18. Severability – In the event that any one or more of the provisions of this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
19. Representatives
 - a. Local Agency's Representative: The Local Agency's Representative for this Agreement shall be the Local Agency Manager or such other individual as Local Agency shall designate in writing. Whenever approval or authorization from or communication or submission to Local Agency is required by this Agreement, such communication or submission shall be directed to the Local Agency's Representative and approvals or authorizations shall be issued only by such Representative; provided, however, that in exigent circumstances when Local Agency's Representative is not available, MDT may direct its communication or submission to other designated Local Agency personnel or agents.

- b. MDT's Representative: The MDT Representative for this Agreement shall be the District Administrator or Area Maintenance Chief or such other individual as MDT shall designate in writing. Whenever direction to or communication with MDT is required by this Agreement, such direction or communication shall be directed to MDT's Representative; provided, however, that in exigent circumstances when MDT's Representative is not available, Local Agency may direct its direction or communication or submission to other designated MDT personnel or agents.
20. Counterpart Execution – This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by any of the Parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

IN WITNESS WHEREOF, MDT's authorized representative has hereunto signed on behalf of the State of Montana, and the Local Agency's authorized representative on behalf of the Local Agency, has signed and affixed hereto the seal of the Local Agency.

STATE OF MONTANA, DEPARTMENT OF TRANSPORTATION

By _____
Montana Department of Transportation

_____ Date

Approved for Legal Content

Approved for Civil Rights

The above resolution was adopted by the Board of County Commissioners this _____ day of _____, 20__.

YELLOWSTONE COUNTY, MONTANA

By _____
Mark Morse, Chairman, Board of County
Commissioners

ATTEST:

By _____
Chris White, Board of County Commissioners

Jeff Martin
Clerk and Recorder

By _____
Mike Waters, Board of County Commissioners

ATTACHMENT A:

**MDT NONDISCRIMINATION AND
DISABILITY ACCOMMODATION NOTICE**

ATTACHMENT B:
PROJECT LOCATION MAP

JOHNSON LANE SIDEWALK CONCEPTUAL DESIGN (SHEET 1 OF 2)

ROCKWOOD ST TO OLD HARDIN RD
WITHIN
YELLOWSTONE COUNTY

APRIL 2025
BILLINGS, MONTANA

PREPARED FOR : YELLOWSTONE COUNTY, MONTANA
PREPARED BY : **sarbell**

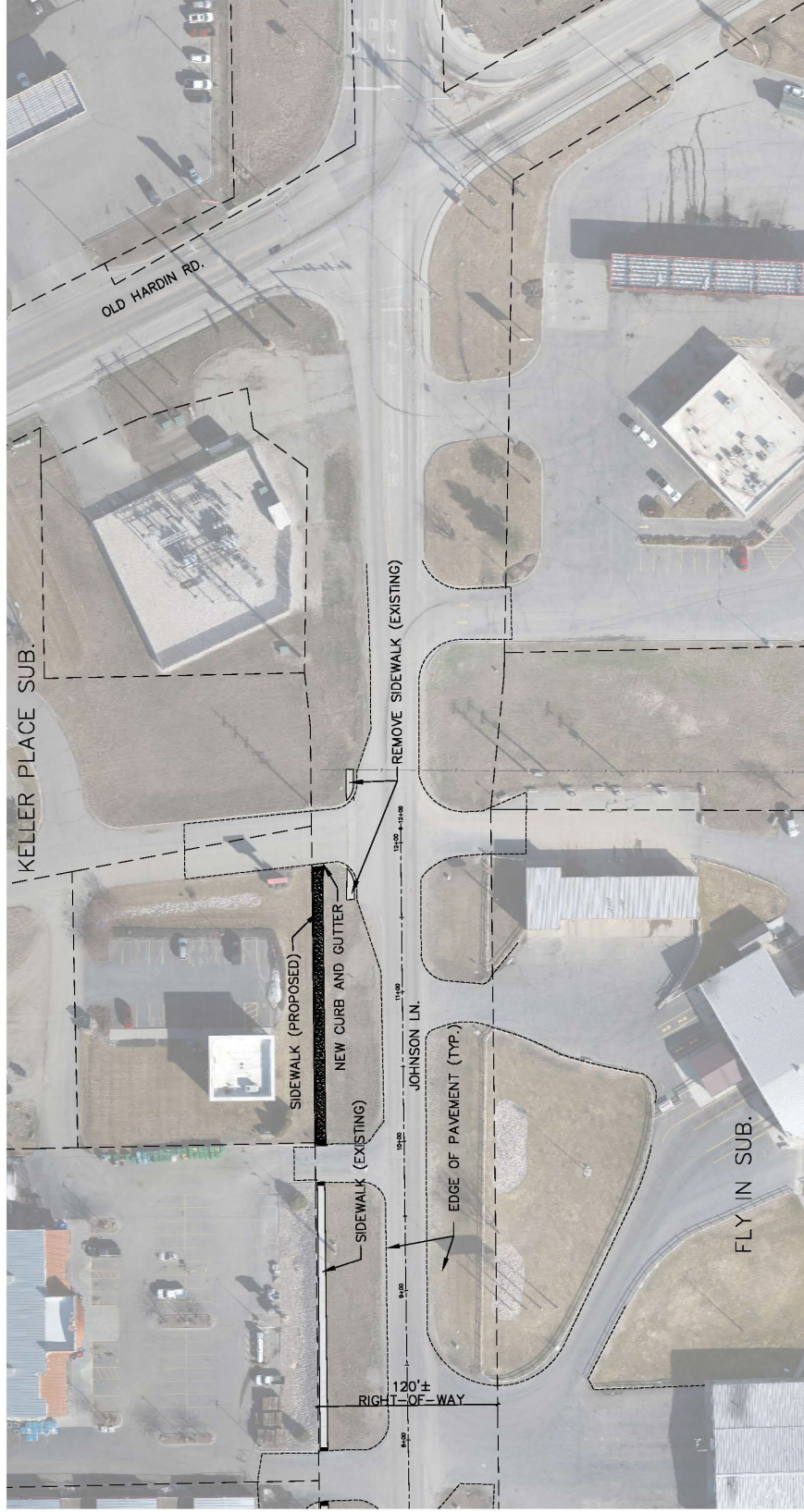
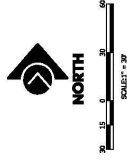


JOHNSON LANE SIDEWALK CONCEPTUAL DESIGN (SHEET 2 OF 2)

ROCKWOOD ST TO OLD HARDIN RD
WITHIN
YELLOWSTONE COUNTY

PREPARED FOR : YELLOWSTONE COUNTY, MONTANA
PREPARED BY : **sanbell**

APRIL 2025
BILLINGS, MONTANA



MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation ("MDT") is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter "protected classes") by its employees or anyone with whom MDT does business:

Federal protected classes

Race, color, religion, national origin, sex, age, disability, and genetic information.

State protected classes

Race; color; national origin; familial or marital status; pregnancy, childbirth, or medical conditions related to pregnancy or childbirth; creed; social origin or condition; genetic information; sex, sexual orientation, gender identification or expression; ancestry; age; mental or physical disability; political or religious affiliations or ideas; military service or veteran status; vaccination status or possession of immunity passport.

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:

- a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
- b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
 - i. Statement that PARTY does not discriminate on the grounds of any protected classes.
 - ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).

- iii. Contact information for PARTY's representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.
 - iv. Information on how to request information in alternative accessible formats.
- c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

- a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY must comply with applicable federal and state laws regarding the DBEs, including but not limited to 49 CFR Part 26.
- b. By signing this agreement the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
- c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:

In all solicitations, either by competitive bidding, or negotiation, made by the PARTY for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the PARTY of the PARTY's obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by MDT or relevant US DOT Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY's noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it

or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
- b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:

During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Federal

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601 *et seq.*), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Sections 162 and 301(g) of the Federal-Aid Highway Act of 1973, (Public Law No. 93-87, 87 Stat. 250, codified at 23 U.S.C. § 324), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Section 520 of the Airport and Airways Improvement Act of 1982, (49 U.S.C. § 47123), (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (Public Law No. 100-259), (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients, and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, (42 U.S.C. §§ 12131 through 12189), which prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and

certain testing entities as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

State

- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraphs one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives cited therein. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.

B.O.C.C Thursday Discussion

3.

Meeting Date: 09/10/2026

Title: Cheyenne Leads - Laramie County Data Center

Submitted By: Erika Guy

TOPIC:

Cheyenne Leads - Laramie County Data Center

BACKGROUND:

Presentation on Data Centers

RECOMMENDED ACTION:

Discuss

B.O.C.C Thursday Discussion

4.

Meeting Date: 09/10/2026

Title: Bill Honaker - Courthouse Sky Bridge

Submitted By: Erika Guy

TOPIC:

Bill Honaker - Courthouse Sky Bridge

BACKGROUND:

Discussion on the future of the Sky Bridge on the 2nd floor of the Yellowstone County Courthouse.

RECOMMENDED ACTION:

Discuss

B.O.C.C Thursday Discussion

5.

Meeting Date: 09/10/2026

Title: Mark Hofland - Broadview Town Marshall

Submitted By: Erika Guy

TOPIC:

Mark Hofland - Broadview Town Marshall

BACKGROUND:

NA

RECOMMENDED ACTION:

Discuss

B.O.C.C Thursday Discussion

1.

Meeting Date: 09/10/2026

Title: Gabel Gravel Pit - Storm Debris

Submitted By: Erika Guy

TOPIC:

Gabel Gravel Pit - Storm Debris

BACKGROUND:

Opening the Gabel Gravel Pit for storm debris.

RECOMMENDED ACTION:

Discuss

B.O.C.C Thursday Discussion

2.

Meeting Date: 09/10/2026

Title: Board Applications - Dennis Cook to Consolidated Zoning Commission & Richard Klose to Area II Agency on Aging

Submitted By: Erika Guy

TOPIC:

Board Applications - Dennis Cook to Consolidated Zoning Commission & Richard Klose to Area II Agency on Aging

BACKGROUND:

See Attached. The consolidated zoning commission is a 5-member board. Currently, there are 2 members. The board needs one more member for a quorum.

RECOMMENDED ACTION:

Discuss

Attachments

Dennis Cook

Richard Klose

YELLOWSTONE COUNTY BOARD OPENINGS

August 11, 2026

CITY/COUNTY PLANNING: DIST 3	2 year	1 partial to 12/31/26
CITY/COUNTY PLANNING: DIST 4	2 year	1 partial to 12/31/26
CITY/COUNTY PLANNING: DIST 5	2 year	1 full to 12/31/27
CITY/COUNTY PLANNING: DIST 7	2 year	1 full to 12/31/27

- ❖ NOTE: To be eligible for the above special district boards, applicants must live AND own property within the boundaries of the district. To find which planning district you live in, please contact the City/County Planning Division at 247-8676.

BROADVIEW CEMETERY	3 year	1 full to 6/30/29
BLUE CREEK FIRE SERVICE AREA	3 year	2 full to 5/8/27
LAUREL FIRE DISTRICT #5	3 year	1 full to 5/1/28
LAUREL FIRE DISTRICT #7	3 year	1 full to 5/1/28
HUNTLEY PROJECT FIRE SERVICE AREA	3 year	1 full to 6/30/29

- ❖ NOTE: To be eligible for the above special district boards, applicants must live OR own property within the boundaries of the district.

CONSOLIDATED ZONING COMMISSION	2 year	1 full to 6/30/27 1 full to 6/30/28
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- ❖ NOTE: Eligible applicants for the above board must live outside the city limits of Billings but within 4-1/2 mile zoning boundary.

LOCKWOOD PEDESTRIAN SAFETY DISTRICT ADV.	3 year	1 partial to 12/31/27
AREA II AGENCY ON AGING	1 year	1 full to 6/30/27
ALLIES IN AGING	2 year	3 full to 6/30/28

APPLICATIONS FOR THE ABOVE POSITIONS WILL BE ACCEPTED
UNTIL 5:00PM ON THURSDAY, September 10, 2026

July 28, 2026

LOCKWOOD URBAN TRANSPORTATION DISTRICT	4 year	2 full to 5/2/28
FUEGO FIRE SERVICE AREA	3 year	1 full to 12/31/28
WORDEN FIRE DISTRICT #4	3 year	1 full to 5/1/29
LAUREL FIRE DISTRICT #7	3 year	1 full to 5/1/29

- ❖ NOTE: To be eligible for the above special district boards, applicants must live OR own property within the boundaries of the district.

CUSTER CEMETERY BOARD	3 year	1 partial to 6/30/27
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APPLICATIONS FOR THE ABOVE POSITIONS WILL BE ACCEPTED
UNTIL 5:00PM ON THURSDAY, August 27, 2026

July 21, 2026

CONSOLIDATED ZONING COMMISSION	2 year	1 full to 6/30/28
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- ❖ NOTE: Eligible applicants for the above board must live outside the city limits of Billings but within 4-1/2 mile zoning boundary.

APPLICATIONS FOR THE ABOVE POSITIONS WILL BE ACCEPTED
UNTIL 5:00PM ON THURSDAY, August 20, 2026

SEP 01 2026

BOARD APPLICATION FORM
YELLOWSTONE COUNTY, MONTANA

NAME: DENNIS L. COOK HOME PHONE: 406-698-9103
ADDRESS: 1985 THREE BARS TRAIL WORK PHONE: 406-698-9102
CITY: BILLINGS STATE: MT ZIP: MT 59105
BUSINESS OR JOB: REAL ESTATE BROKER
E-MAIL ADDRESS: DENNIS.COOK@BILLINGSHOMES4SALE.COM
BOARD OR COMMISSION APPLIED FOR: Consolidated Yellowstone County Zoning Commission

Please describe your experience or background that you believe qualifies you for service on this Board or Commission (attach additional sheets if needed):

I HAVE 12 YRS OF ZONING EXPERIENCE. FAMILIARITY WITH ZONING GOES WITH BEING A BROKER.

Why do you wish to serve on this Board or Commission?

HOPE TO USE MY EXPERIENCE TO GIVE INPUT THAT IS AVAILABLE - TO THE FURTHERANCE OF ZONING LAWS & REGULATIONS

Additional information that you feel is pertinent (attach additional sheets if needed):

FUNDAMENTAL TRAINING @ RE LEVEL AS WELL AS.../USING THAT PROPERTY IS HAND. USE VALUATION INFO TO DETERMINE CORRECT ZONING.

Dennis L. Cook
Signature

3/31/2026
Date

Return application to: Board of County Commissioners
P.O. Box 35000
Billings, MT 59107-5000

OFFICE USE ONLY:

APPOINTED: YES ☐ NO ☐ DATE _____

TERM EXPIRATION DATE: _____

(Circle one)

ORIGINAL APPOINTMENT REAPPOINTMENT TERM NO: _____

BOARD APPLICATION FORM
YELLOWSTONE COUNTY, MONTANA

SEP 08 2026

NAME: RICHARD A. KLOSE JR HOME PHONE: _____
ADDRESS: 511 COTTONWOOD AVE WORK PHONE: 406-671-1814
CITY: LAUREL STATE: MT ZIP: 59044
BUSINESS OR JOB: RETIRED
E-MAIL ADDRESS: KLOSERICHARD@YAHOO.COM
BOARD OR COMMISSION APPLIED FOR: AREAL AGENCY ON AGING

Please describe your experience or background that you believe qualifies you for service on this Board or Commission (attach additional sheets if needed):

I HAVE SERVED ON THE LAUREL SENIOR CENTER BOARD FOR MORE THEN 10 YEARS.

I SERVED ON THE ALLIES IN AGING BOARD FOR 9 1/2 YEARS.

Why do you wish to serve on this Board or Commission?

TO CONTINUE TO SUPPORT SENIORS.

Additional information that you feel is pertinent (attach additional sheets if needed):

Richard A. Klose Jr
Signature

09-03-2026
Date

Return application to: Board of County Commissioners
P.O. Box 35000
Billings, MT 59107-5000

OFFICE USE ONLY:		
APPOINTED:	YES ☐	NO ☐ DATE _____
TERM EXPIRATION DATE: _____		
(Circle one)		
ORIGINAL APPOINTMENT	REAPPOINTMENT	TERM NO: _____