

APPENDIX 17 SUBDIVISION IMPROVEMENT AGREEMENT; GUARANTY

[Sample adapted from State Model
Subdivision Regulations, 2020]

MODEL SUBDIVISION IMPROVEMENT AGREEMENT

The parties to this Subdivision Improvements Agreement ("this agreement") are _____ ("the subdivider") and City of Thompson Falls.

WHEREAS, the subdivider desires to defer construction of improvements described in Attachment B;

WHEREAS, the purpose of this Agreement is to protect the City of Thompson Falls and is not intended for the benefit of contractors, suppliers, laborers or others providing work, services, or materials to the Subdivision, or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants and obligations contained in this Agreement are authorized by state law and the City of Thompson Falls subdivision regulations.

NOW THEREFORE BE IT RESOLVED, The Parties hereby agree as follows:

1. Effective Date: The effective date of this Agreement shall be the date that final subdivision plat approval is granted by the City of Thompson Falls.
2. Attachments: The Attachments cited herein are hereby made a part of this Agreement.

Subdivider's Obligations

3. Improvements: The Subdivider shall construct and install, at his own expense, those subdivision improvements listed in Attachment B of this Agreement. The Subdivider's obligation to complete the improvements shall arise upon approval of the final subdivision plat, shall not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision, and shall be independent of any obligations of the City of Thompson Falls contained in this Agreement.
4. Security: To secure the performance of his obligations under this Agreement, the Subdivider shall deposit with the City of Thompson Falls on or before the effective date, an Irrevocable Letter of Credit *(or other financial security acceptable to the local officials)* in the amount of \$_____. The letter of credit shall be issued by _____ *(lending institution)*, be payable at sight to the City of Thompson Falls and bear an expiration date not sooner than 4 years after the effective date of this Agreement. The

letter of credit shall be payable to the City of Thompson Falls at any time upon presentation of (1) a sight draft drawn on the issuing lending institution in the amount up to \$_____, (2) a signed statement or affidavit executed by an authorized City of Thompson Falls official stating that the Subdivider is in default under this Agreement; and (3) the original copy of the letter of credit.

5. Standards: The Subdivider shall construct the required improvements according to the standards and specifications required by the City of Thompson Falls as specified in Attachment D of this agreement.
6. Warranty: The Subdivider warrants that each and every improvement shall be free from defects for a period of 1 year from the date that the City of Thompson Falls accepts the dedication of the last improvement completed by the Subdivider.
7. Commencement and Completion Periods: The Subdivider shall complete all of the required improvements within 1 year from the effective date of this Agreement.
8. Compliance with Law: The Subdivider shall comply with all relevant laws, ordinances, regulations and requirements in effect at the time of subdivision plat approval when meeting his obligations under this Agreement.

City of Thompson Falls Obligations

9. Inspection and Certification:
 - a. The City of Thompson Falls shall provide for inspection of the improvements as they are completed and, where found acceptable, shall certify those improvements as complying with the standards and specifications set forth in Attachment D of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Subdivider that the improvements are complete and he desires City of Thompson Falls inspection and certification. Before requesting City of Thompson Falls certification of any improvement the Subdivider shall present to the City of Thompson Falls valid lien waivers from all persons providing materials or performing work on the improvement.
 - b. Certification by the City of Thompson Falls does not constitute a waiver by the City of Thompson Falls of the right to draw funds under the letter of credit in the event defects in or failure of any improvement are found following the certification.
10. Notice of Defect: The City of Thompson Falls shall provide timely notice to the Subdivider whenever inspection reveals that an improvement does not conform to the standards and specifications set forth in Attachment D, or is otherwise defective. The Subdivider shall have 30 days from the date the notice is issued to remedy the defect. The City of Thompson Falls may not declare a default under this Agreement during the 30-day remedy period unless the Subdivider clearly indicates he does not intend to correct the defect. The Subdivider shall have no right to correct the defect in, or failure of, any improvement found after the City of Thompson Falls accepts dedication of the improvements.

11. Reduction of Security: After the acceptance of any improvement, the amount that the City of Thompson Falls is entitled to draw on the letter of credit shall be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown in Attachment B. At the request of the Subdivider, the City of Thompson Falls shall execute a certificate verifying the acceptance of the improvement and waiving its right to draw on the letter of credit to the extent of the amount. Upon the certification of all of the improvements the balance that may be drawn under the credit shall be available to the City of Thompson Falls for the one-year warranty period plus an additional 90 days.
12. Use of Proceeds: The City of Thompson Falls shall use funds drawn under the letter of credit only for the purposes of completing the improvements or correcting defects in or failure of the improvements.

Other Provisions

13. Events of Default: The following conditions, occurrences or actions shall constitute a default by the Subdivider during the completion period:
 - a. failure to complete construction of the improvements within 1 year of final subdivision plat approval;
 - b. failure to remedy the defective construction of any improvement within the remedy period;
 - c. insolvency of the Subdivider or the filing of a petition for bankruptcy;
 - d. foreclosure of the property or assignment or conveyance of the property in lieu of foreclosure.
14. Measure of Damages: The measure of damages for breach of this Agreement shall be the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment B shall be prima facie evidence of the minimum cost of completion. However, neither that amount nor the amount of the letter of credit establishes the maximum amount of the Subdivider's liability. The City of Thompson Falls shall be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever was commenced.
15. Local Government Rights Upon Default:
 - a. Upon the occurrence of any event of default, the City of Thompson Falls may draw on the letter of credit to the extent of the face amount of the credit less the estimated cost (as shown in Attachment B) of all improvements previously certified by the City of Thompson Falls. The City of Thompson Falls shall have the right to complete improvements itself or contract with a third party for completion, or the City of Thompson Falls may assign the proceeds of the letter of credit to a subsequent Subdivider who has acquired the Subdivision and who shall have the same rights of completion as the City of Thompson Falls if and

only if the subsequent Subdivider agrees in writing to complete the unfinished improvements.

- b. In addition, the City of Thompson Falls may suspend final plat approval during which time the Subdivider shall have no right to sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City of Thompson Falls or until the improvements are completed and certified by the City of Thompson Falls.
16. Indemnification: The Subdivider agrees to indemnify and hold the City of Thompson Falls harmless for and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work under this Agreement. The Subdivider is not an employee or agent of the City of Thompson Falls.
 17. Amendment or Modification: The Parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City of Thompson Falls and by the Subdivider.
 18. Attorney's Fees: Should either party be required to resort to litigation, arbitration or mediation to enforce the terms of this agreement, the prevailing party, whether plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator or mediator awards relief to both parties, each shall bear its own costs in their entirety.
 19. Third Party Rights: No person or entity who is not party to this Agreement shall have any right of action under this Agreement, except that if the City of Thompson Falls does not exercise its rights within 60 days following an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the City of Thompson Falls to exercise its rights.
 20. Scope: The Agreement constitutes the entire agreement between the parties and no statement, promise or inducement that is not contained in this Agreement shall be binding on the parties.
 21. Time: For the purpose of computing the commencement and completion periods, and time periods City of Thompson Falls actions, times in which war, civil disasters, acts of God or extreme weather conditions occur shall not be included if the events prevent the Subdivider or the City of Thompson Falls from performing the obligations under this Agreement.
 22. Assigns: The benefits of this Agreement to the Subdivider may not be assigned without the express written approval of City of Thompson Falls. Such approval may not be withheld unreasonable, but any unapproved assignment is void. There is no prohibition on the right of the City of Thompson Falls to assign its rights under this Agreement.

The City of Thompson Falls shall release the original Subdivider's letter of credit if it accepts new security from any Subdivider or lender who obtains the property. However, no

action by the City of Thompson Falls shall constitute a release of the original Subdivider from his liability under this Agreement.

23. Severability: If any part, term or provision of this Agreement is held by the courts to be illegal the illegality shall not affect the validity of any other part, term or provision, and the rights of the parties shall be construed as if the part, term or provision were never part of the Agreement.

Dated this _____ day of _____, 20____.

City of Thompson Falls Mayor

Subdivider

ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

The following are acceptable means of guaranteeing subdivision improvements agreements, although others may also be acceptable. The irrevocable letter of credit is often the preferable guaranty because it is usually feasible for a subdivider to secure, and the local government can readily obtain funds to complete the required improvements should the subdivider default on installing the improvements. A suggested irrevocable letter of credit and commentary are included as part of this Appendix. The other common guaranties are also explained below.

The subdivider shall provide one or more of the following financial security guarantees in the amount of 125% of the engineer's estimated total cost of installing all required improvements.

1. Letter of Credit

Subject to City Council approval, the subdivider shall provide the City Council an irrevocable letter of credit from a bank or other reputable institution or individual certifying the following:

- a. That the creditor guarantees funds in the amount approved by the City Council.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor will immediately pay to the City Council upon presentation of a sight draft without further actions, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit state in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the City Council.

2. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the City Council or in escrow with a bank. The use of collateral other than cash, and the selection of the bank where funds are to be deposited must be approved by the City Council.

Where an escrow account is to be used, the subdivider shall give the City Council an agreement with the bank guaranteeing the following:

- a. That the funds in the escrow account are to be held in trust until released by the City Council and may not be used or pledged by the subdivider as security for any obligation during that period.
- b. That, should the subdivider fail to complete the required improvements, the bank shall immediately make the funds in escrow available to the City Council for completing these improvements.

3. Property Escrow

The subdivider may offer as a guarantee land or other property, including corporate stocks or bonds. The value of any real property to be used, accounting for the possibility of a decline in its value during the guarantee period, shall be established by a licensed real estate appraiser at the subdivider's expense. The City Council may reject the use of property as collateral when the property value is unstable, when the property may be difficult to sell, or when other factors exist which will inhibit the exchange of the property for an amount of money sufficient to complete required improvements.

When property is offered as an improvement guarantee, the subdivider shall:

- a. Make an agreement with the escrow agent instructing the agent to release the property to the City Council in the case of default. The agreement shall be placed on file with the Sanders County Clerk and Recorder.
- b. File with the City Council an affidavit affirming that the property to be used as a guarantee is free and clear of any encumbrances or liens at the time it is to be put in escrow.
- c. Execute and file with the City Council an agreement stating that the property to be placed in escrow as an improvement guarantee will not be used for any other purpose, or pledged as a security for any other matter until it is released by the City Council.

4. Surety Performance Bond

The bond shall be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the City Council and countersigned by a Montana agent. The bond shall be payable to the City of Thompson Falls. The bond shall be in effect until the completed improvements are accepted by the City Council.

5. Special Improvements District

The City Council may enter into an agreement with the subdivider, and the owners of the property proposed for subdivision if other than the subdivider, that the installation of required improvements will be financed through a special or rural improvement district created pursuant to title 7, Chapter 12, MCA. This agreement must provide that no lots within the subdivision will be sold, rented, or leased, and no contract for the sale of lots executed, before the improvement district has been created.

If the proposed subdivision lies in an unincorporated area, the subdivider, or other owners of the property involved must also petition the City Council to create a rural improvement district pursuant to Section 7-12-2102, MCA.

An agreement to finance improvements through the creation of a special improvement district, or a petition to create a rural improvement district, constitutes a waiver by the subdivider or the other owners of the property of the right to protest, or petition against, the creation of the district under either Section 7-12-2109 or Section 7-12-4110, MCA. This

waiver must be filed with the Sanders County Clerk and Recorder and will be deemed to run with the land.

**MODEL
IRREVOCABLE LETTER OF CREDIT**

Letter of Credit No. _____

City of Thompson Falls

Date

Address

Gentlemen:

We hereby establish in your favor our Irrevocable Letter of Credit # _____ for the account of _____ (Subdivider) _____, available by your drafts at sight up to an aggregate amount of \$ _____. Should _____ (Subdivider) _____ default or fail to complete the improvements under the terms specified in the attached subdivision improvements agreement for _____ (name of subdivision) _____ we shall pay on demand your sight draft or drafts for such funds, to the limit of credit set forth herein; as are required to complete said improvements.

All drafts must be presented prior to _____ expiration date _____ and this Letter of Credit must accompany the final draft for payment. Drafts drawn hereunder must be by sight draft marked:

*Drawn under _____ (lending institution) _____, Letter of Credit # _____ dated _____ (date of Letter of Credit) _____, * and the amount drawn endorsed on the reverse hereof by the lending institution.

Unless otherwise state, this Letter of Credit is Subject to the Uniform Customs and Practices for Commercial Documentary Credits (1983 Revision) International Chamber of Commerce. We hereby agree with the drawers, endorsers and bona fide holders of the drafts drawn under and in compliance with the terms of this Credit that these drafts shall be duly honored upon presentation to the drawee.

This letter of credit may not be withdrawn or reduced in any amount prior to its expiration date except by your draft or written release.

(Lending Institution)

(Signature and Title of Official)

APPENDIX 18 SAMPLE CERTIFICATES

Certificate of Completion of Public Improvements

Certificate of Surveyor – Final Plat

Certificate of Dedication – Final Plat

Certificate of Consent to Dedication by Encumbrances

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

Certificate of Examining Land Surveyor Where Required – Final Plat

Certificate of County Treasurer

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

CERTIFICATE OF COMPLETION

(List the improvements actually installed.)

Date _____

Date _____

Address (Engineers Seal)

STATE OF MONTANA)
) SS.
City of)

Dated this _____ day of _____, 20____.

(Signature of Surveyor)

Certificate of Dedication – Final Plat

(I) (We), the undersigned property owner(s), do hereby certify that (I) (We) have caused to be surveyed, subdivided and platted into lots, blocks, streets and alleys, as shown by the plat hereto annexed, the following described land in City of Thompson Falls, to-wit:

(Exterior boundary description of area contained in plat and total acreage)

The above-described tract of land is to be known and designated as (Name of Subdivision), and the lands included in all streets, avenues, alleys, and parks or public squares shown on said plat are hereby granted and donated to the use of the public forever.

Dated this _____ day of _____, 20 ____.

(Acknowledged and notarized signatures of all record owners of platted property)

Consent to Dedication by Encumbrancers, If Any

(I) (We), the undersigned encumbrancer(s), do hereby join in and consent to the annexed plat and release (my) (our) respective liens, claims and encumbrances as to any portion of said lands shown on such plat as being dedicated to the use of the public forever.

Dated this _____ day of _____, 20 ____.

(Acknowledged and notarized signatures of all encumbrances of record)

Certificate of Waiver of Park Land Dedication and Acceptance of Cash in Lieu Thereof

I, _____, the Clerk of the Sanders County, Montana, do certify that the following order was made by the (City of Thompson Falls Council) at a meeting thereof held on the _____ day of _____, 20 ____, and entered into the proceedings of said Body to-wit: "Inasmuch as the dedication of park land within the platted area of (Name of Subdivision) is undesirable for the reasons set forth in the minutes of this meeting, it is hereby ordered by the (City of Thompson Falls City Council) that land dedication for park purposes be waived and that cash in lieu of park with the provisions of Title 76, Chapter 3, MCA."

In witness whereof, I have hereunto affixed the seal of (City of Thompson), Montana this _____ day of _____, 20 ____.

(Seal)

(Signature of Clerk)

Certificate of Examining Land Surveyor Where Required – Final Plat

I, (Name of Examining Land Surveyor), acting as an Examining Land Surveyor for (City of Thompson Falls), Montana, do hereby certify that I have examined the final plat of (Name of Subdivision) and find that the survey data shown thereon meet the conditions set forth by or pursuant to Title 76, Chapter 3, Part 4, MCA.

Dated this _____ day of _____, 20 ____.

(Signature)
(Name of Surveyor)
Registration No. _____
(City or City)

Certificate of Sanders County Treasurer

I hereby certify, pursuant to Section 76-3-611(1)(b), MCA, that all real property taxes assessed and levied on the land described below and encompassed by the proposed (Name of Subdivision) have been paid:

(legal description of land)

Dated this _____ day of _____, 20 ____.

(seal)

(Signature of Sanders County Treasurer)
County Treasurer, _____ County, Montana

Certificate of Final Plat Approval – City of Thompson Falls

The City Council of City of Thompson Falls, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it, and hereby accepts the dedication to public use of any and all lands shown on this plat as being dedicated to such use, this _____ day of _____, 20 ____.

(Signatures of Mayor)

ATTEST:

(Seal of City of Thompson Falls)

(Signature of Clerk and Recorder)
_____, Montana

Certificate of Filing by Clerk and Recorder

STATE OF MONTANA)

) ss.

Sanders County _____)

Filed for record this _____ day of _____, 20 ____, at _____ o'clock.

(Signature of Clerk and Recorder)

County Clerk and Recorder, _____ Sanders County, Montana

APPENDIX 19 SUMMARY OF EXEMPTIONS FROM SURVEY REQUIREMENTS, SUBDIVISION REVIEW, AND SANITATION REVIEW

Exemptions from:	Surveying Requirements		Subdivision Review		Sanitation Review*	
	Exempt	Citation Allowing the Exemption	Exempt	Citation Allowing the Exemption	Exempt	Citation Allowing the Exemption
Within Platted Subdivisions						
Aggregation of Lots for 5 or fewer lots	No	---	Yes	76-3-207(1)(f) MCA	Yes (2)	76-4-125(2)(b),(c),(d) MCA
Boundary Relocation for 5 or fewer lots	No	---	Yes	76-3-207(1)(d) MCA	Yes (2)	76-4-125(2)(b),(c),(d) MCA
Boundary Relocation With Platted & Unplatted Land	No	---	Yes	76-3-207(1)(e) MCA	No	---
Condominiums	No	---	Yes	76-3-203 MCA	No (3)	76-4-111, MCA
Outside of Platted Subdivisions						
Boundary Relocation	No	---	Yes	76-3-207(1)(a) MCA	No	---
Family Transfer	No	---	Yes	76-3-207(1)(b) MCA	No	---
Agricultural Covenant	No	---	Yes	76-3-207(1)(c) MCA	Yes	ARM 17.36.605
Aggregation of Parcels	No	---	Yes	76-3-207(1)(f) MCA	No	---
Condominiums	No	---	No	---	No	---
Within and Outside of Platted Subdivisions						
Major Subdivision	No	---	No	---	No	---
Minor Subdivision	No	---	No	---	No	---
Eminent Domain, Condemnation, Order of Court	Yes (5)	76-3-201(a) MCA	Yes	76-3-201(a) MCA	Yes	76-4-125(2)(a) MCA
Security for Const. Mortgage, Lien, Trust Indenture	Yes (5)	76-3-201(b) MCA	Yes	76-3-201(b) MCA	Yes	76-4-125(2)(a) MCA
Oil, Gas, Water or Mining Claim	Yes (5)	76-3-201(c) MCA	Yes	76-3-201(c) MCA	Yes	76-4-125(2)(a) MCA
Cemetery Lots	Yes (5)	76-3-201(d) MCA	Yes	76-3-201(d) MCA	Yes	76-4-125(2)(a) MCA
Life Estate	Yes (5)	76-3-201(e) MCA	Yes	76-3-201(e) MCA	Yes	76-4-125(2)(a) MCA
Farming and Agricultural Lease (6)	Yes (5)	76-3-201(f) MCA	Yes	76-3-201(f) MCA	Yes	76-4-125(2)(a) MCA
Location where State does not have Jurisdiction	Yes (5)	76-3-201(g) MCA	Yes	76-3-201(g) MCA	Yes	76-4-125(2)(a) MCA
Rights-of-Way, Utility Sites (6)	Yes (5)	76-3-201(h) MCA	Yes (6)	76-3-201(h) MCA	Yes (6)	76-4-125(2)(c) MCA
Airport Land for Lease, Rental	Yes (6)	76-3-205(1) MCA	Yes	76-3-205(1) MCA	No	---
Certain State-Land Divisions	Yes	76-3-205(2) MCA	Yes	76-3-205(2) MCA	No	---
Highway Acquisition	Yes	76-3-209 MCA	Yes	76-3-209 MCA	Yes	ARM 17.36.605
Retracement Surveys	No	---	Yes	Implicit	Yes	Implicit
Correction Survey	No	---	Yes	Implicit	Yes	Implicit
Affidavit of Correction	Possibly	Implicit	Yes	Implicit	Yes	Implicit

Notes

1. This is a summary only, intended to show the various exemptions in a simple format. Specific provisions of this Code and State law apply in all cases.
 2. Exempt only when the lots are served by public water and sewer, or the plat indicates such facilities will not be erected.
 3. Exempt unless subdivision causes facilities previously approved to deviate from conditions of approval. See ARM 17.6.605
 4. Exempt only when the subdivision meets all of the requirements as outlined in Section 76-4-124, MCA.
 5. A survey may be filed if the applicable exemption is cited on the face of the plat.
 6. Subsequent change in use requires subdivision review
- * Sanitarian exemption shall be stated in entirety on survey

APPENDIX 20 REQUEST FOR EXEMPTION REVIEW

Note to Applicant: The purpose of this review is to enable City of Thompson Falls officials to determine whether or not the proposed use of an exemption from local subdivision review would evade the Montana Subdivision and Platting Act. You will be notified of the Exemption Review Board's decision within 20 working days of submittal of a complete application to the Thompson City Planning Board. (A complete application consists of the review fee and 3 copies of the request for exemption review, certificate of survey (as required) and supporting documents.

1. Landowner <i>(if more than two landowners, please attach additional sheets)</i>	
A. Name	E-mail:
Address	Phone
B. Name	E-mail:
Address	Phone
2. Surveyor	
Name	Firm
Address	Phone
3. Existing Parcel(s) <i>(if more than two parcels, please attach additional sheets)</i>	
A. Location	
_____ Section _____, Township _____ Range _____	
Other Legal Description:	
Geocode # 25- _____	
(2) (4) (2) (1) (2) (2) (4)	
When was the parcel created <i>(example: Occasional Sale COS 999, 5/1/92)?</i>	
Has a subdivision application for the parcel been withdrawn or denied? Yes No	
B. Location	
_____ Section _____, Township _____ Range _____	
Other Legal Description:	
Geocode # 25- _____	
(2) (4) (2) (1) (2) (2) (4)	
When was the parcel created <i>(example: Occasional Sale COS 999, 5/1/92)?</i>	
Has a subdivision application for the parcel been withdrawn or denied? Yes No	

4. Type of Exemption and Reason or Justification		
<input type="checkbox"/> Gift or Sale to Immediate Family Member ("Family Transfer")		
Recipient(s)	Relationship to Claimant	Age
<ul style="list-style-type: none"> • Attach copies of all deeds, contracts, restrictions and covenants related to this property recorded within the past year. • If recipients are under age 18, attach documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act., etc. 		
Date Landowner(s) became sole owner(s) of parcel to be divided.		
<input type="checkbox"/> Agricultural Exemption		
Description of current and proposed agricultural use:		
Explanation of eligibility under 15.7.202, MCA:		
<input type="checkbox"/> Relocation of Common Boundary Lines Outside or Adjoining a Platted Subdivision		
Describe and provide documentation showing the need or reason for the relocation: (attach supporting documentation)		
<input type="checkbox"/> Lot Aggregation/Relocation of Common Boundary Lines within Platted Subdivision		
Describe and provide documentation showing the need or reason for the relocation: (attach supporting documentation)		
<input type="checkbox"/> Security for Construction ("Mortgage Exemption")		
Attach signed and notarized statement from lending institution confirming that the exempt parcel is necessary to secure a construction loan for buildings or other improvements on the parcel or for refinancing.		
<input type="checkbox"/> Other		
Reason/justification:		

5. Intentions for Use
Claimants' and recipients' intentions for the use of each parcel (including existing, new and remainder parcels) (i.e. will the parcel(s) be used for agriculture, residences, etc.):
6. Intentions for Disposition
Claimants' and recipients' long term and short term intentions for the disposition of each parcel (including existing, new and remainder parcels) (i.e. after this transaction is finalized, will the parcel(s) be retained by recipient, sold, gifted, etc.):
7. Attachments
<input type="checkbox"/> Certificate of Survey
<input type="checkbox"/> Certificate of Exemption, signed and notarized
<input type="checkbox"/> Copies of recorded deeds documenting present ownership for all affected parcels.
<input type="checkbox"/> Copies of draft deeds for exchange of ownership, if any exchange is proposed.
<input type="checkbox"/> Copies of draft deed restrictions or covenants, if any.
<input type="checkbox"/> Documentation supporting the proposed exemption.
<input type="checkbox"/> (Family Transfer) Copies of all deeds, contracts, restrictions and covenants related to this property recorded within the past year.
<input type="checkbox"/> (Family Transfer) If recipients are under age 18, documentation of trust, custodianship pursuant to the Montana Uniform Transfers to Minors Act, etc.
<input type="checkbox"/> (Mortgage Exemption) Statement from lending institution confirming need.
<input type="checkbox"/> (Ag Exemption) Draft deed(s) for transferring property or copy of agreement to buy and sell.

8. Acknowledgements (initialed by all landowners)

☐ ☐ **I understand** that the State of Montana provides that certain divisions of land, which would otherwise constitute subdivisions, are exempt from local subdivision review and approval, unless the transactions are an attempt to evade the Montana Subdivision and Platting Act.

Landowner Initials: (A) _____ (B) _____

☐ ☐ **I affirm** that this exemption claim is not an attempt to evade the Montana Subdivision and Platting Act.

Landowner Initials: (A) _____ (B) _____

☐ ☐ **I recognize** that I may be subject to penalty if my actions are deemed to be an effort to evade subdivision review, as set forth in the Montana Code Annotated:

- 76-3-301(3). If transfers not in accordance with this chapter [i.e., Chapter 3, Local Regulation of Subdivisions] are made, the City attorney shall commence action to enjoin further sales or transfers and compel compliance with all provisions of this chapter. The cost of such action shall be imposed against the party not prevailing.

- 76-3-105 Violations. Any person who violates any provision of this chapter [i.e., Chapter 3, Local Regulation of Subdivisions] or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a City jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.
- 45-7-201. Perjury.
 - (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.
 - (2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than \$50,000, or by both such fine and imprisonment.
 - (3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.
 - (4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.
 - (5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
 - (6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.
 - (7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.
- 45-7-202. False swearing.
 - (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:
 - (a) the falsification occurs in an official proceeding;
 - (b) the falsification is purposely made to mislead a public servant in performing his official function; or
 - (c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.
 - (2) Subsections (4) through (7) of 45-7-201 apply to this section.
 - (3) A person convicted of false swearing shall be fined not to exceed \$500 or be imprisoned in the City jail for any term not to exceed 6 months, or both.

Landowner Initials: (A) _____ (B) _____

9. Affidavit (required from all landowners)

_____, Landowner(s),

being first duly sworn upon oath, deposes and says as follows:

I, as Claimant, have read the foregoing Subdivision Exemption Claim Application and affirm that it is true and correct.

Landowner's Signature Date _____

Landowner's Signature Date _____

State of _____

City of _____

Subscribed and sworn to before me on this _____ day of _____, 20_____.

(seal)

Notary Public for the State of _____

Residing at _____

My commission expires _____

Received: ____/____/____ By: ____
Application Complete: ____/____/____ By: ____

(owner)	(type)
---------	--------

€Agricultural Covenant	€Boundary Adjustment	€Family Transfer
€Lot Aggregation	€Mortgage	€Other

- | | |
|--|---------------|
| | Check # _____ |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | / / |
| | / / |
| | |

(1) Name: _____

(2) Name: _____

Parcel ID/Geocode: 25- - - - -
1/4 Section: Section: Township: Range:

Subdivision Name/ Certificate of Survey #:

Parcel/Tract #	Lot #	Block #
----------------	-------	---------

EXEMPTION REVIEW BOARD – Meeting Date:

Determination, based on attached review:

- € Approved or Approved with Condition(s) (See Conditions/Comments). The approval expires 180 days from the date of the exemption review board determination.
- € Submittal incomplete or inaccurate. Return to applicant for revisions. If second submittal is found incomplete or inaccurate, application will be denied and a new application and fee will be required.
- € Deny (See Condition(s)/Comments)

Conditions/Comments:

- € Taxes to be paid in full at time COS is presented for filing.
- € Deeds transferring property required at time COS is presented for filing.
- € Correct Sanitation Exemption. _____
- € RSID payoff required for (# or specific parcels) _____.
- € Review by examining land surveyor at applicant's expense is required.
- € Corrections required: _____
- € 1. Update water rights (through Montana Dept. of Natural Resources and Conservation).
- € 2. _____
- € 3. _____

Signatures of Exemption Review Board Members:

Sanitarian

Planning

Clerk and Recorder

Date

Applicant Notified of decision by Clerk & Recorder on _____.

A landowner whose exemption request has been denied may submit a written appeal of the decision to the City Council within twenty (20) working days after receiving notification of the exemption review board's decision. The appeal must be accompanied by an explanation of why the proposed exemption should be approved. The City Council may reverse the decision of the exemption review board.

NOTE: Approved exemptions must be submitted for filing within 180 days of the exemption review determination date.

APPENDIX 27**EXEMPTION REVIEW CHECKLIST (Part 2)**

General Criteria – In its review of an exemption request, the exemption review board shall consider all of the surrounding circumstances. These circumstances may include, but are not limited to: (a) the prior history of the tract in question; (b) whether the claimant has engaged in prior exempt transactions involving the tract; (c) the configuration of the tracts if the proposed exempt transaction is completed; and (d) any pattern of exempt transactions that will result in the equivalent of a subdivision without local government review.

General Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
1. Tract history			

General Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
2. Claimant's prior exemption history involving the tract			

General Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
3. Resulting tract configuration			

General Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
<p>4. Pattern of Development – Exemption(s) does/does not result in the equivalent of a subdivision without local subdivision review. If any of the following conditions exist, a pattern of development is presumed.</p>	Does not	Does	
<p>(a) Original Tract Less Than 20 Acres: more than three parcels (i.e., two exempt parcels and a remaining parcel) have/have not been divided from the original tract of less than 20 acres regardless of ownership by use of exemptions of the Act;</p>	Have not	Have	

General Criteria	Acceptable	Not Acceptable	Discussion/Comment/Condition
(b) Original Tract 20 Acres Or More: more than four parcels under 20 acres (i.e., three exempt parcels and a remaining parcel) have/have not been divided from the original tract of 20 acres or more, regardless of ownership, by use of exemptions of the Act;	Have not	Have	
(c) Use of exemption(s) contiguous to platted lots where common streets are shared or the exempted tracts have similar shape or size to the platted lots, or the exempted tracts are being created by the same landowner who created the platted lots.	Does not meet description	Meets description	
5. Other Circumstances			

Family Conveyance [76-3-207(1)(b), MCA] The intention of this exemption is to allow a landowner to convey one parcel to each member of the immediate family (See Appendix A for definition) without local subdivision review. A single parcel may be conveyed to each member of the immediate family under this exemption in each City where the landowner owns property.

Family Conveyance Specific Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
FC 1. The proposed new parcel would/would not result in a pattern of development.	Would not	Would	
FC 2. The division is/is not made for the purpose of speculation by the grantor or for resale for the benefit of the grantor by using the grantee as a "straw person".	Is not	Is	
FC 3. A transfer of a parcel of land by one family member to another, by quitclaim deed, followed by an attempted use of this exemption.	Does not meet description	Meets description	
FC 4. The transfer is/is not the second or subsequent family transfer of property owned by the grantor to the same member of the immediate family.	Is not	Is	
FC 5. The name of the grantee and relationship to the grantor do/do not appear on the face of the proposed Certificate of Survey.	Do	Do not	
FC 6. The grantee is/is not also one of the grantors.	Is not	Is	
FC 7. The grantee is/is not a minor child and the trustee is the grantor.	Is not	Is	
FC 8. The property is/is not a parcel created through the family conveyance exemption which was transferred within three (3) years of the parcel's creation.	Is not	Is	
FC 9. The affidavit of intent is/is not incomplete or missing.	Is not	Is	
FC 10. The tract proposed for division was/was not previously created through the use of an exemption.	Was not	Was	

Family Conveyance Specific Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
FC 11. The proposed use of the family conveyance exemption would/would not create more than one remainder parcel of less than 160 acres.	Would not	Would	
FC 12. The exempted parcel is/is not being divided from a tract that was previously created through the use of an exemption, including remaining tracts of less than 160 acres.	Is not	Is	
FC 13. There is/is not evidence at the time of review indicating that the proposed new tract is intended to be sold.	Is not	Is	
FC 14. This exemption is/is not an alternative to a proposed subdivision for which an application has been submitted.	Is not	Is	
FC 15. The proposed exemption is/is not located within a subdivision platted since July 1, 1973 (76-3-207(1)(b), MCA).	Is not	Is	

Agricultural Exemption [76-3-207(1)(c), MCA] - The intention of this exemption is to allow a landowner to create a parcel without local subdivision and sanitation review, where the land will be gifted, sold, or there is an agreement to buy and sell the divided land, which will be used only for the raising of crops or livestock or for the preservation of open space, and where no residential, commercial or industrial buildings will be built.

Agricultural Exemption Specific Criteria	Acceptable	Not Acceptable	Discussion/Comment/ Condition
AE 1. Documentation of the intent to gift, sell, or an agreement to buy or sell the divided land is/is not included as supporting documentation with the application.	Is	Is not	
AE 2. The proposed covenant to run with the land is included as supporting documentation with the application.	Is	Is not	
AE 3. The landowner has/has not demonstrated that the planned use of the exempted parcel is for agricultural purposes and that no residential, commercial or industrial buildings have been or will be built on it.	Has	Has not	
AE 4. The parcel does/does not meet the criteria for an agricultural exemption under 15-7-202, MCA.	Does	Does not	
AE 5. The appropriate sanitation exemption is/is not cited.	Is	Is not	

Boundary Adjustment or Aggregation [76-3-207(1)(a) and (d), MCA] - The intended purpose of this exemption is to allow a change in the location of a boundary line between two adjoining parcels and to allow a transfer of a tract to effect that change in location without local subdivision review.

Boundary Adjustment/Aggregation Specific Criteria	Acceptable	Not Acceptable	Discussion/Comment/Condition
BA 1. Certificate of survey claiming the exemption does/dose not clearly distinguish between the existing boundary location and the new boundary and includes the appropriate landowner certification.	Does	Does not	
BA 2. Certificate of survey does/does not include the appropriate landowner certification.	Does	Does not	
BA 3. The boundary adjustment will/will not result in the permanent creation of an additional parcel of land.	Will not	Will	
BA 4. The submitted documentation does/does not support the stated reason for relocation.	Does	Does not	
BA 5. The proposed relocation of common boundary lines does/does not significantly rearrange multiple parcels with little or no resemblance to the original parcel configuration.	Does not	Does	
Where the boundary adjustment will affect more than one set of landowners:			
BA 6. All affected landowners did/did not sign the application for exemption.	Did	Did not	
BA 7. A quit claim deed from the adjoining property owner(s) for the newly described parcel or parcels is/is not included.	Is	Is not	

Mortgage Exemption [76-3-201(1)(b), MCA] - Division to Provide Security for a Mortgages, Liens or Trust Indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes.

Mortgage Exemption Specific Criteria	Acceptable	Evasion Presumed	Discussion/Comment/Condition
ME 1. Application includes a signed statement from a lending institution that the creation of the exempted parcel is necessary to secure a construction loan for buildings or other improvements on the parcel.	Includes	Not included	
ME 2. More than one new building site will/will not be created.	Will not	Will	
ME 3. The financing is/is not for construction or improvements on the exempted parcel, or for refinancing.	Is	Is not	
ME 4. The person named in the statement explaining who would have possession of the remainder parcel if title to the exempted parcel is conveyed is / is not anyone other than the borrower of funds for construction or refinancing.	Borrower	Anyone but the borrower	
ME 5. Title to the exempted interest would/would not be initially obtained by the lending institution in the event of foreclosure.	Would	Would not	
ME 6. There is/is not a prior agreement to default or a prior agreement to purchase only a portion of the original tract.	Is not	Is	
ME 7. It does/does not appear that the principal reason the interest is being created is to create a building site and using the interest to secure a loan is a secondary purpose.	Does not	Does	

Mortgage Exemption Specific Criteria	Acceptable	Evasion Presumed	Discussion/Comment/ Condition
ME 8. The division of land is/ is not created for the purpose of conveyance to any entity other than the financial or lending institution to which the mortgage, lien or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien or trust indenture.	Is not	Is	
ME 9. Creates no more than one parcel under one hundred sixty (160) acres from the original tract.	Meets description	Does not meet description	

OTHER EXEMPTIONS: Other exemptions allowed under MCA 76-3-201

Other Exemption (MCA 76-3-201)	Acceptable	Evasion Presumed	Discussion/Comment/ Condition
(a) Court Order MCA 76-3-201 CO1. Was/was not created by court order. CO2. City Council was/was not notified by court (include written comment by City Council).	Was created Notified	Was not created Not notified	
(c) Surface Ownership Severed – Interest in oil, gas, minerals, or water severed from surface ownership.	Applies	Does not apply	
(d) Cemetery Lots.	Applies	Does not apply	
(e) Reservation of life estate.			
(f) Lease or rental for farming and agricultural purposes.			
(g) State does not have jurisdiction.			
(h) Rights-of-way or utility sites.			Subsequent change in use to residential, commercial, or industrial use subject to subdivision review

APPENDIX 23 REQUEST FORM TO LIFT AN AGRICULTURAL EXEMPTION

Part I. Landowner Information

Name _____

Address _____

Telephone _____ Date of Request _____

Signature _____

Part II. Property Information

Location/Legal Description _____

Date of Agricultural Exemption Approval _____

Exemption Filing Information (Book, Page) _____

Part III. Please describe your reason for requesting the agricultural exemption be lifted. *Note: In order to have your agricultural exemption lifted, you must go through the subdivision process and have the parcel created as a subdivided lot.*

Part IV. City Council Decision

This request is hereby: _____ **Approved** _____ **Denied**

Reason: _____

Signature of Board of City Mayor Date

APPENDIX 24 VARIANCE APPLICATION FORM

1. **Project Name** _____
2. **Landowner Information**

Name: _____

Address: _____

Telephone: _____

Signature: _____ Date _____
3. **Describe the requested variance.** _____

4. **Describe how the requested variance meets each of the following criteria (Attach additional pages as needed):**
 - a. The variance will not be detrimental to the public health, safety, or general welfare, or injurious to other adjoining properties.
 - b. 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 these regulations is enforced.
 - c. The variance will not cause a substantial increase in public costs.
 - d. The variance will not in any manner place the proposed subdivision in non-conformance with any adopted zoning regulations or in substantial non-compliance with the City of Thompson Falls Growth Policy.
5. **As appropriate, discuss whether or not the variance is a part of an innovative development proposal which does not circumvent the purpose of the City of Thompson Falls Subdivision Regulations.**
6. **Provide names and addresses of all adjoining property owners. Provide documentation that written notification of the variance request has been provided to them, plus any existing property owners association potentially affected by the project as determined by the planner.**

APPENDIX 25 AMENDED PLAT CHECKLIST

Section A: Completed by Subdivider

Amended Plat Title:

Location:

Property Owner Name & Address:

Engineer/Surveyor & Address:

Legal Description:

Property Geocode/Parcel ID:

Date of Completion by Subdivider:

Subdivider Explanatory Comments:

Section B: Completed by Planner			
	Date:	By:	Comment:
Application Received:			
Exemption Review Board Review:			
Clerk & Recorder Review			
Examining Land Surveyor Review (if existing)			
Signed mylar copies received:			
Taxes paid, County Treasurer signature:			
Submitted to City Council:			

Section C: Completed by Subdivider and Planner

Items and Information, Filled Out by: (Note if Not Applicable)	Subdivider	Planner	
		Incomplete	OK/NA
Amended Plat Review Fee.			
<i>Final Plat or Plan</i>			
Submitted in accordance with the Montana Uniform Standards			
a. Three blueline copies.			
b. Digital copy.			
c. Two (2) signed/notarized mylar plats (<u>AFTER</u> preliminary review complete).			
<i>Face of the Final Plat (or Plan) shall include:</i>			
a. Vicinity map.			
b. Council signature block.			
c. Applicable sanitation exemption statements			
d. Requirements set by exemption review board as conditions of approval.			
<i>Final Plat/Plan Supplements – ORIGINAL documents:</i>			
a. Certificate of a title abstractor (title company).			
b. New covenants (plat approval covenants and/or owner association covenants) or deed restrictions relating to the subdivision.			
c. Certificate from the Montana Department of Environmental Quality (if not exempt)			
<i>As applicable:</i>			
d. Certification by City/County sanitarian that plans and specifications for sanitary facilities (sewer, water, stormwater, and solid waste) have been approved (if not exempt).			

City Comments:

APPENDIX 26 PRELIMINARY PLAT EXTENSION FORM

1. Project Information	
Project Name: _____	
Preliminary Plat Approval Date: _____	
Date and period of previous preliminary plat extensions: _____	
Proposed time extension length: _____	
2. Subdivider information	
Name: _____	
Address: _____	
Telephone: _____	
Signature: _____	Date _____
3. Describe the requested extension, addressing the following points (Attach additional pages as needed): <ul style="list-style-type: none"> a. Progress made in complying with the conditions of preliminary plat approval; b. Circumstances which have affected the timing of the subdivision development; c. The extent to which any significant changes in the area have occurred or are expected to occur during the time of the extension period; and d. Whether or not the provision of public facilities and services in the area will be disrupted by the requested extensions. 	
OFFICE USE ONLY	
Extension Request Received on ____ / ____ / ____ by _____	
Fee paid on ____ / ____ / ____	
Materials deemed complete on ____ / ____ / ____ by _____	
Site inspected on ____ / ____ / ____ by _____	
Notice of Planner's recommendation and review by Planning Board sent to subdivider on ____ / ____ / ____ by _____	
Scheduled for review at City Council meeting at ____ / ____ / ____ on ____ / ____ / ____	