

**XI-A. Fee Schedule<sup>1</sup>**

**XI-A-1. Preliminary Plat Review**

To cover costs of reviewing plans, advertising, holding public hearings, and other activities associated with the review of a subdivision proposal, the subdivider shall pay a non-refundable fee at the time of application for preliminary plat approval. The fees, payable to the county (or city) treasurer or planning department, are as follows:

<u>Number of Proposed Lots or Dwelling Units</u>	<u>Fee</u>
1-5 (first minor subdivisions)	\$150.00
6 or more (major subdivisions) or subsequent minor subdivisions	\$400 plus \$5.00 per lot

**XI-A-2. Other Reviews**

Mobile/Manufactured Home Parks and Spaces	\$25.00 per lot created
Condominiums	\$50.00 per unit created

**XI-A-3. Final Plat Review and Inspection**

To cover the cost of on-site inspection of the subdivision and review of the final plat and supplementary materials, the subdivider shall pay a non-refundable fee at the time of application for final approval to the county (or city) treasurer or planning department at the following rate:

\$5.00 plus \$.50 per lot up to and including 100 lots; plus \$.25 per lot for each additional lot in excess of 100 lots; plus \$2.00 per page.

**ADMINISTRATIVE MATERIALS "A"**

**SUBDIVISION PLAT APPLICATION**

**PART I GENERAL DESCRIPTION AND INFORMATION**

1. Name of the proposed subdivision \_\_\_\_\_
2. Location (City and/or County) \_\_\_\_\_  
Legal description: \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 of Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_
3. Type of water supply system:
  - a. Individual surface water supply from spring \_\_\_\_\_
  - b. Multiple-family water supply system (3-14 connections and fewer than 25 people) \_\_\_\_\_
  - c. Service connection to multiple-family system \_\_\_\_\_
  - d. Service connection to public system \_\_\_\_\_
  - e. Extension of public main \_\_\_\_\_
  - f. New public system \_\_\_\_\_
  - g. Individual well \_\_\_\_\_
4. Type of wastewater treatment system:
  - a. Individual or shared on-site septic system \_\_\_\_\_
  - b. Multiple-family on-site system (3-14 connections and fewer than 25 people) \_\_\_\_\_
  - c. Service connection to multiple-family system \_\_\_\_\_
  - d. Service connection to public system \_\_\_\_\_
  - e. Extension of public main \_\_\_\_\_
  - f. New public system \_\_\_\_\_
5. Name of solid waste garbage disposal site and hauler:  
\_\_\_\_\_
6. Is information included which substantiates that there will be no degradation of state waters or that degradation will be nonsignificant? \_\_\_\_\_
8. Descriptive Data:
  - a. Number of lots or rental spaces \_\_\_\_\_
  - b. Total acreage in lots being reviewed \_\_\_\_\_

- c. Total acreage in streets or roads \_\_\_\_\_
- d. Total acreage in parks, open space, and/or common facilities \_\_\_\_\_
- e. TOTAL gross acreage of subdivision \_\_\_\_\_
- f. Minimum size of lots or spaces \_\_\_\_\_
- g. Maximum size of lots or spaces \_\_\_\_\_

9. Indicate the proposed use(s) and number of lots or spaces in each:

- \_\_\_\_\_ Residential, single family
- \_\_\_\_\_ Residential, multiple family
- \_\_\_\_\_ Types of multiple family structures and numbers of each (e.g. duplex)
- \_\_\_\_\_ Planned Unit Development (Number of units \_\_\_\_\_ )
- \_\_\_\_\_ Condominium (Number of units \_\_\_\_\_ )
- \_\_\_\_\_ Mobile Home Subdivision (Number of spaces \_\_\_\_\_ )
- \_\_\_\_\_ Recreational Vehicle Subdivision (Number of spaces \_\_\_\_\_ )
- \_\_\_\_\_ Commercial or Industrial
- \_\_\_\_\_ Other (please describe) \_\_\_\_\_

10. Provide the following information regarding the development:

- a. Current land use \_\_\_\_\_
- b. Existing zoning or other regulations \_\_\_\_\_
- c. Depth to ground water at the time of year when water table is nearest to the natural ground surface within the drainfield area \_\_\_\_\_
- d. Depth to bedrock or other impervious material in the drainfield area \_\_\_\_\_
- e. If a tract of land is to be subdivided in phases, an overall development plan indicating the intent for the development of the remainder of the tract.
- f. Drafts of any covenants and restrictions to be included in deeds or contracts for sale. Drafts of homeowners' association bylaws and articles of incorporation, if applicable. (Submitting a draft copy of a homeowners' association bylaws and articles of incorporation is adequate for DEQ to initiate and complete its review of sanitary facilities, but a copy of the fully executed documents must be submitted before DEQ can issue final approval.)
- g. Indicate whether the mineral rights have been severed from the property:

Yes\_\_\_\_\_ No\_\_\_\_\_

h. Indicate whether water rights have been severed from the property:  
Yes\_\_\_\_\_ No\_\_\_\_\_

11. Is the applicant claiming an exemption under Section IV-A-1 of the subdivision regulations from the requirement to prepare an environmental assessment?  
Yes\_\_\_\_\_ No\_\_\_\_\_

Name, address, and telephone number of designated representative, if any (e.g., engineer, surveyor).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

Name, address, and telephone number of owner(s).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of owner

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

Name, address, and telephone number of subdivider if different than owner(s).

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of subdivider

\_\_\_\_\_  
Address (Street or P.O. Box, City, State, Zip Code)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

The application must be signed by the owner of the land proposed for subdivision or the responsible officer of the corporation offering the same for sale.

## **PART II      PRELIMINARY PLAT FORM, CONTENTS AND SUPPLEMENTS**

### **1.      Preliminary Plat Subdivision Application Form:**

The subdivider shall submit a completed subdivision application form that is signed by the landowner(s) of record.

### **2.      Preliminary Plat Review Fee:**

The subdivider shall submit the required review fee as identified in the pre-application meeting and in Section XI-A of the subdivision regulations.

### **3.      Preliminary Plat Form, Contents, and Supplements:**

The subdivider shall submit an 11” by 17” and an 18” by 24” (or 24” by 36”) preliminary plat completed by a land surveyor.

The following information must be provided on the preliminary plat or in supplements to the preliminary plat:

- a.      The subdivision or development name (the title must contain the words “plat” and/or “subdivision”)
- b.      The legal description, including Section, Township, and Range, and any underlying survey data;
- c.      A north arrow;
- d.      The scale used on the plat;
- e.      The certification of a professional land surveyor;
- f.      The certification of a professional engineer (if the preliminary plat application or data includes engineering plans or specifications);
- g.      The names of all owners of record and the subdivider [if different from the owner(s)];
- h.      The date the preliminary plat is completed;
- i.      Proposed lot layout with approximate dimensions and sizes;
- j.      Lots and blocks identified by number or letter;
- k.      The use of each lot, if other than for single-family residential;
- l.      The exterior boundaries of the parcel proposed for subdivision with bearings, distances, and curve data indicated outside of the boundary lines. When the plat is bounded by an irregular shoreline or body of water, the bearings and distances of a closing meander traverse shall be given;
- m.      All existing streets, roads, highways, avenues, alleys, and/or access easements within or adjacent to the subject property;
- n.      All proposed streets, roads, alleys, avenues, and easements; the width of the easement or right-of-way, grades, curvature of each;
- o.      Existing and proposed road and street names;
- p.      Proposed location of intersections for any subdivision requiring access to state or local streets, roads, avenues, alleys, or highways;
- q.      The names of adjoining platted subdivisions and recording information from adjoining subdivisions, certificates of survey, or unplatted lands;
- r.      The approximate location of all section corners or legal subdivision corners of sections pertinent to the subdivision boundary;
- s.      Approximate area, location, boundaries, and dimensions of all parks, common grounds, and other grounds dedicated for public use;
- t.      The total gross area of the subdivision and the total net area, exclusive of public areas and rights-of-way;
- u.      Existing and proposed infrastructure and proposed utilities including:
  - i.      The approximate location, size, and depth of existing and proposed sanitary and storm sewers;

- ii. The approximate location, size, and depth of existing and proposed water mains, lines, wells, and facilities; and
  - iii. The approximate locations of gas lines, fire hydrants or firefighting water storage facilities, electric and telephone lines, and street lights.
- 4. A vicinity sketch showing:
  - a. The approximate locations of all existing buildings, structures, and other improvements;
  - b. Ownership of lands immediately adjoining a subdivision, and existing buildings, structures and other improvements on those lands; and
  - c. Any existing or proposed zoning of the tract and adjacent lands, if applicable.
- 5. A topographic map:
  - a. For any land area which will be subdivided or disturbed, contour intervals of 2' where the average slope is less than 10%; intervals of five feet where the average slope is greater than 10% and less than 15%; and intervals of ten feet where the average slope is 15% or greater.
  - b. Slopes greater than 25% shall be shown as no-build zones.
- 6. A grading and drainage plan that includes:
  - a. Proposed grades of all streets and roads;
  - b. Proposed drainage facilities for all lots, blocks, and other areas displaying accurate dimensions, courses, and elevations;
  - c. Existing and proposed contours, using the contour requirements of a topography map;
  - d. Graded slopes;
  - e. Calculations for a ten year frequency one-hour storm and a method to mitigate adverse impacts for a 100-year frequency one-hour storm; and
  - f. Construction procedures, slope protection, or information describing the ultimate destinations of storm runoff used to minimize erosion; and
  - g. Slope Stability Report shall be completed if the proposed subdivision includes areas with the potential for landsliding or slope instability. The report must be completed by a qualified soil or geotechnical engineer and indicate the locations, character, and extent of all areas of all slope stability, and these areas shall be shown on the plat.
- 7. Engineering plans for all public and private improvements;
- 8. Overall development plan and if the improvements are to be completed in phases, the approximate area of each phase shall be shown on the plat.
- 9. Abstract of Title (or Title Report) dated not more than 90 days prior to the date of submittal;
- 10. Lienholders' Acknowledgement of Subdivision for each lienholder identified on the Abstract of Title or Title Report;
- 11. Documentation of legal and physical access;
- 12. Documentation of existing easements, including those for Agricultural Water User Facilities;
- 13. Existing covenants and deed restrictions;
- 14. Existing water rights;
- 15. Existing mineral rights;
- 16. Names and addresses of all adjoining property owners;
- 17. A proposed road plan and profile that includes:
  - a. Street names.
  - b. Right-of-way or easement widths;
  - c. Pavement widths;
  - d. Street grades;
  - e. Pavement and base thickness;
  - f. Typical cross sections for each type of road;
  - g. Road profiles and cross sections for all proposed streets and roads which have grades exceeding 5%, or cuts and fills exceeding 3'.
  - h. The type and location of sidewalks and curbs (where required);
  - i. The minimum site distances at corners;
  - j. The minimum curb radiuses at corners;

- k. For cul-de-sac streets:
    - i. widths of turn around radiuses;
    - ii. minimum right-of-way widths at the turnarounds;
    - iii. minimum pavement or road surface width at the turnarounds;
    - iv. total lengths of the streets.
  - l. The locations and characteristics of bridges and culverts;
  - m. The locations and dimensions of adjoining lots and open spaces;
  - n. The locations and widths of easements and dedicated land, which provide a buffer between the subdivision lots and streets;
  - o. Typical grading and location of intersections with private driveways; and
  - p. Description of how the roads will be maintained.
18. Encroachment permits from Montana Department of Transportation or the local jurisdiction;
  19. Proposed easements;
  20. Proposed disposition of water rights, as required by Section VI-O of the subdivision regulations;
  21. Proposed disposition of mineral rights;
  22. Parkland dedication calculations, including a property valuation assessment or appraisal if cash-in-lieu of parkland is proposed;
  23. Environmental Assessment and/or Summary of Probable Impacts including:
    - a. proof that the subdivider has submitted for review copies of the subdivision application and environmental assessment, if applicable, to the public utilities and agencies of the local, state, and federal government identified during the pre-application meeting or subsequently identified as having an interest in the proposed subdivision; and
    - b. an explanation of how the subdivider has responded to the comments of the subdivision administrator at the pre-application meeting.
  24. Transportation Impact Analysis or Transportation Plan;
  25. Fire Risk Rating Analysis and Fire Prevention Plan as required in Section VI-R of the subdivision regulations;
  26. Weed Management Plan and Re-vegetation Plan;
  27. Property owners' Association Documents shall accompany the preliminary plat, and at a minimum shall provide the information, form, and contents included in Section II-B-3 of the subdivision regulations;
  28. FIRM or FEMA panel map and/or letter identifying floodplain status and other hydrologic characteristics including surface water bodies, designated floodplain and areas of riparian resource, as required in Section VI-D of the subdivision regulations and paragraph 35 of this Part II.
  29. Required water and sanitation information, including:
    - a. Provide the following attachments to the preliminary plat:
      - i. A vicinity map or plan that shows:
        - A. The location, within 100 feet outside of the exterior of the property line of the subdivision and on the proposed lots, of:
          1. floodplains;
          2. surface water features;
          3. springs;
          4. irrigation ditches;
          5. existing, previously approved, and for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
          6. for parcels less than 20 acres, mixing zones identified as provided in subsection (X); and
          7. the representative drainfield site used for the soil profile description as required under subsection (C)(4); and
        - B. The location, within 500 feet outside of the exterior property line of the subdivision, of public water and sewer facilities.

- ii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, as provided below, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rule published by the DEQ;
- iii. A drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by DEQ pursuant to 76-4-104;

b. Water Supply

- i. High Groundwater Report indicating there is not a problem with high groundwater present on the property proposed for subdivision. When evidence of high groundwater is present, the developer must submit plans that are prepared by a professional engineer to mitigate the problem;
- ii. A vicinity map or plan that shows:
  - A. the location, within 100' outside of the exterior property line of the subdivision and on the proposed lots of:
    - 1. floodplains;
    - 2. surface water features;
    - 3. springs;
    - 4. irrigation ditches;
    - 5. existing, previously approved, and, for parcels less than 20 acres, proposed water wells and wastewater treatment systems;
    - 6. for parcels less than 20 acres, mixing zones identified as provided in subsection c.i.C.1 below.
  - B. the location, within 500' outside the exterior property line of the subdivision, of public water and sewer facilities;
- iii. A description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the Department of Environmental Quality in the Administrative Rules of Montana, or 76-4-101 et seq., MCA, including the following information:
  - A. If an **individual water supply system** is proposed for each parcel:
    - 1. Indicate the distance to the nearest public water system.
    - 2. Attach a copy of the lot layout showing the proposed location of each spring, well, or cistern and indicating the distance to existing or proposed wastewater treatment systems.
    - 3. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
  - B. For a **multiple user water system**:
    - 1. If an existing system is to be used:
      - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
      - b. indicate the system's capacity to handle additional load and its distance from the development;
      - c. provide evidence that permission to connect to the system has been granted;
    - 2. provide the following attachments:

- a. map or plat showing location, sizes, and depth of any existing water supply lines and facilities which may directly serve parcels within the proposed development;
        - b. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.38.305 and Circular DEQ 3.
      - 3. evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
    - iv. Where a new system is proposed:
      - a. Provide evidence of adequate water availability, unless cisterns are proposed:
        - i. obtained from well logs or testing of onsite or nearby wells;
        - ii. obtained from information contained in published hydrogeological reports; or
        - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
      - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
      - c. provide all information required in ARM 17.36.330-336 and Circular DEQ-3.
      - d. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
- C. For a **public water system**:
  - 1. If an existing system is to be used:
    - a. identify the system and the person, firm, or agency responsible for its operation and maintenance;
    - b. indicate the system's capacity to handle additional load and its distance from the development;
    - c. provide evidence that permission to connect has been granted;
    - d. provide the following as attachments:
      - i. a map or plat showing the location, sizes, and depth of any existing water lines and facilities which will directly serve parcels within the proposed development;
      - ii. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.
      - iii. Evidence of sufficient water quality in accordance with rule adopted by the DEQ pursuant to 76-4-104;
  - 2. If a new system is proposed:
    - a. Provide evidence of adequate water availability:
      - i. obtained from well logs or testing of onsite or nearby wells;
      - ii. obtained from information contained in published hydrogeological reports; or
      - iii. as otherwise specified by rules adopted by the DEQ pursuant to 76-4-104;
    - b. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
    - c. provide plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328-330 and Circular DEQ-1 or Circular DEQ-3.

- d. Evidence of sufficient water quality in accordance with rules adopted by the DEQ pursuant to 76-4-104;
- c. Wastewater Treatment System
- i. For new onsite wastewater treatment systems, evidence of suitability that at a minimum includes:
    - A. a soil profile description from a representative drainfield site identified on the vicinity map, as provided in section C.1.(a)(i)(G), that complies with the standards published by DEQ;
    - B. demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and
    - C. in cases in which the soil profile or other information indicates that ground water is within 7 feet of the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation distance provided in section (ii) above.
      - 1. For all new wastewater treatment systems a preliminary analysis of potential impacts to ground water quality using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant changes in water quality. The preliminary analysis may be based on currently available information and must consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this subsection the subdivider may perform a complete nondegradation analysis in the same manner as is required for an application that is reviewed under Title 76, chapter 4.
  - ii. If **individual wastewater treatment systems** are proposed for each parcel:
    - A. Indicate the distance to the nearest public wastewater treatment system.
    - B. Provide all information required in ARM 17.36.320-345 and in Circular DEQ-4 for conventional systems or Circular DEQ 5 for alternative systems.
    - C. evidence of suitability as provided in subsection (a) of this section
    - D. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.
  - iii. For a **multiple-user wastewater treatment** system:
    - A. If an existing system is to be used:
      - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
      - 2. indicate the system's capacity to handle additional load and its distance from the development;
      - 3. provide evidence that permission to connect to the system has been granted;
      - 4. provide the following attachments:
        - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development; and
        - b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.320-345 and Circular DEQ-4 or Circular DEQ-5.

- B. If a new system is proposed:
  - 1. indicate who will install the system, who will bear the costs, when it will be completed, and who will own it;
  - 2. provide all information required in ARM 17.36.320-326 and Circular DEQ-4 or Circular DEQ-5.
  - 3. evidence of suitability as provided in subsection (a) of this section.
  - 4. preliminary analysis of potential impact to ground water as provided in subsection (b) of this section.
- iv. For a **public wastewater treatment system**:
  - A. If an existing system is to be used:
    - 1. identify the system and the person, firm, or agency responsible for its operation and maintenance;
    - 2. indicate the system's capacity to handle additional load and its distance from the development;
    - 3. provide evidence that permission to connect to the system has been granted;
    - 4. provide the following attachments:
      - a. a map or plat showing the location, sizes, and depth of any existing sewer lines and facilities which will directly serve parcels within the proposed development;
      - b. plans and specifications for all proposed extensions and additional lines and facilities as required by ARM 17.36.328 and Circular DEQ-2 or Circular DEQ-4.
- d. Storm Water
  - i. Describe measures for the collection and disposal of storm run-off from streets and roads within the subdivision.
  - ii. Indicate the type of road surface proposed.
  - iii. Describe facilities for stream or drainage crossing (e.g., culverts, bridges).
  - iv. Describe how surface run-off will be drained or channeled from parcels.
  - iv. Indicate whether storm run-off will enter state waters and describe any proposed treatment measures. (A storm-water discharge permit may be required)
  - iv. Describe any existing or proposed streambank or shoreline alteration, and any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type, and purpose of alteration.
  - iv. Provide the grading and storm water or drainage plan as required by section II-3 Preliminary Plat Supplements, subsection (e) of this appendix.
- e. Solid Waste
  - i. Describe the proposed method of solid waste collection and disposal.
  - ii. If use of an existing collection system or disposal facility is proposed, indicate the name and location of the facility.
  - iii. If on-site disposal of solid waste is proposed, provide the information required in ARM 17.36.309(2).
- 30. A form of Subdivision Improvements Agreement, if proposed;
- 31. Letter requesting a revocation of agricultural covenants;
- 32. Letter indicating locations of cultural or historic resources;
- 33. Variance request or approval;
- 34. Re-zoning application or approval;
- 35. When required, a flood hazard evaluation which contains the following detailed information:[to be submitted to the Water Resources Division, Department of Natural Resources]:
  - a. Certification by a registered professional engineer;
  - b. An overall scaled plan view with identified scale for vertical and horizontal distance showing the following:

- i. Watercourse
  - ii. floodplain boundaries
  - iii. location of property
  - iv. contours
  - v. cross-sections
  - vi. bridges or other contractions in the floodplains
  - vii. USGS gauging stations (if any);
- c. The location and elevation of a temporary benchmark(s) established within the subdivision and referenced to mean sea level with appropriate elevation adjustment.
- d. Cross-sectional information which contains the following information:
- i. Elevations and stations that are determined at points representing significant breaks in ground slope and at changes in the hydraulic characteristics of the floodplain (i.e., points where ground cover, soil, or rock conditions change). Elevations must be reported in NAVD 88 or NGVD 29 datum.
  - ii. Each cross-section must cross the entire floodplain. The cross-section alignment should be perpendicular to the general flow of the watercourse (approximately perpendicular to contour lines). Occasionally, wide floodplains require a dog-leg alignment to be perpendicular to the anticipated flow lines. Shots should be taken at the water's edge and measurements taken (if elevation shots cannot be taken) to determine the channel bottom shape. Cross sections must be accurately located on a USGS 7 ½ minute quad sheet.
  - iii. The number of cross-sections needed, and the distance between cross-sections, will vary depending on the site, the slope of the watercourse, the slope of the channel, and the hydraulic characteristics of the reach. A minimum of four cross sections are required over the entire reach with at least two cross-sections at the property where the elevations are desired. Additional cross-sections must be taken at bridges, control structures, or natural constrictions in topography. [Photogrammetric methods may be used in lieu of cross sections whenever appropriate and when reviewed and approved by the county.]
- e. A description and sketch of all bridges within the reach, showing unobstructed waterway openings and elevations.
- f. Elevation of the water surface is to be determined by survey as part of each valley cross section.
- g. Supporting Documentation, such as engineering reports of computer computations, calculations, and assumptions that may include:
- i. Hydrology (research of published hydrology or calculations showing how hydrology was derived)
  - ii. Input files (hardcopy and on diskette)
  - iii. Output files (diskette only)
36. Letter identifying and proposing mitigation for potential hazards or other adverse impacts as identified in the pre-application meeting and not covered by any of the above required materials; and
37. Such additional relevant and reasonable information as identified by the Subdivision Administrator during the pre-application meeting that is pertinent to the required elements of this section.

### **PART III ENVIRONMENTAL ASSESSMENT**

Information specified in this Part must be provided in addition to that required in parts I and II of this application form, unless the proposed subdivision qualifies for an exemption under Section IV-A-1.b of the subdivision regulations.

Describe the following environmental features, provide responses to each of the following questions and provide reference materials as required.

#### **1. Surface Water**

Locate on a plat overlay or sketch map:

- a. Any natural water systems such as streams, rivers, intermittent streams, lakes or marshes (also indicate the names and sizes of each).
- b. Any artificial water systems such as canals, ditches, aqueducts, reservoirs, and irrigation systems (also indicate the names, sizes and present uses of each).
- c. Time when water is present (seasonally or all year).
- d. Any areas subject to flood hazard, or in delineated 100 year floodplain.
- e. Describe any existing or proposed streambank alteration from any proposed construction or modification of lake beds or stream channels. Provide information on location, extent, type and purpose of alteration, and permits applied for.

#### **2. Groundwater**

Using available data, provide the following information:

- a. The minimum depth to water table and identify dates when depths were determined. What is the location and depth of all aquifers which may be affected by the proposed subdivision? Describe the location of known aquifer recharge areas which may be affected.
- b. Describe any steps necessary to avoid depletion or degradation of groundwater recharge areas.

#### **3. Topography, Geology and Soils**

- a. Provide a map of the topography of the area to be subdivided, and an evaluation of suitability for the proposed land uses. On the map identify any areas with highly erodible soils or slopes in excess of 15% grade. Identify the lots or areas affected. Address conditions such as:
  - i Shallow bedrock
  - ii Unstable slopes
  - iii Unstable or expansive soils
  - iv Excessive slope

- b. Locate on an overlay or sketch map:
  - i Any known hazards affecting the development which could result in property damage or personal injury due to:
    - A. Falls, slides or slumps -- soil, rock, mud, snow.
    - B. Rock outcroppings
    - C. Seismic activity.
    - D. High water table
- c. Describe measures proposed to prevent or reduce these dangers.
- d. Describe the location and amount of any cut or fill more than three feet in depth. Indicate these cuts or fills on a plat overlay or sketch map. Where cuts or fills are necessary, describe plans to prevent erosion and to promote vegetation such as replacement of topsoil and grading.

#### 4. Vegetation

- a. On a plat overlay or sketch map:
  - (i) Indicate the distribution of the major vegetation types, such as marsh, grassland, shrub, coniferous forest, deciduous forest, mixed forest.
  - (ii) Identify the location of critical plant communities such as:
    - A. Stream bank or shoreline vegetation
    - B. Vegetation on steep, unstable slopes
    - C. Vegetation on soils highly susceptible to wind or water erosion
    - D. Type and extent of noxious weeds
- b. Describe measures to:
  - (i) Preserve trees and other natural vegetation (e.g. locating roads and lot boundaries, planning construction to avoid damaging tree cover).
  - (ii) Protect critical plant communities (e.g. keeping structural development away from these areas), setting areas aside for open space.
  - (iii) Prevent and control grass, brush or forest fires (e.g. green strips, water supply, access.)
  - (iv) Control and prevent growth of noxious weeds

#### 5. Wildlife

- a. Identify species of fish and wildlife use the area affected by the proposed subdivision.
- b. On a copy of the preliminary plat or overlay, identify known critical wildlife areas, such as big game winter range, calving areas and migration routes; riparian habitat and waterfowl nesting areas; habitat for rare or endangered species and wetlands.
- c. Describe proposed measures to protect or enhance wildlife habitat or to minimize degradation (e.g. keeping buildings and roads back from shorelines; setting aside wetlands as undeveloped open space).

**Part IV            SUMMARY OF PROBABLE IMPACTS**

Summarize the effects of the proposed subdivision on each topic below. Provide responses to the following questions and provide reference materials as required:

**1.        Effects on Agriculture**

- a.        Is the proposed subdivision or associated improvements located on or near prime farmland or farmland of statewide importance as defined by the Natural Resource Conservation Service? If so, identify each area on a copy of the preliminary plat.
- b.        Describe whether the subdivision would remove from production any agricultural or timber land.
- c.        Describe possible conflicts with nearby agricultural operations (e.g., residential development creating problems for moving livestock, operating farm machinery, maintaining water supplies, controlling weeds or applying pesticides; agricultural operations suffering from vandalism, uncontrolled pets or damaged fences).
- d.        Describe possible nuisance problems which may arise from locating a subdivision near agricultural or timber lands.
- e.        Describe effects the subdivision would have on the value of nearby agricultural lands.

**2.        Effects on Agricultural Water User Facilities**

- a.        Describe conflicts the subdivision would create with agricultural water user facilities (e.g. residential development creating problems for operating and maintaining irrigation systems) and whether agricultural water user facilities would be more subject to vandalism or damage because of the subdivision.
- b.        Describe possible nuisance problems which the subdivision would generate with regard to agricultural water user facilities (e.g. safety hazards to residents or water problems from irrigation ditches, head gates, siphons, sprinkler systems, or other agricultural water user facilities).

**3.        Effects on Local Services**

- a.        Indicate the proposed use and number of lots or spaces in each:
  - \_\_\_\_\_ Residential, single family
  - \_\_\_\_\_ Residential, multiple family
  - \_\_\_\_\_ Types of multiple family structures and number of each (e.g. duplex, 4-plex)
  - \_\_\_\_\_ Planned unit development (No. of units)
  - \_\_\_\_\_ Condominium (No. of units)
  - \_\_\_\_\_ Mobile Home Park
  - \_\_\_\_\_ Recreational Vehicle Park
  - \_\_\_\_\_ Commercial or Industrial
  - \_\_\_\_\_ Other (Please describe \_\_\_\_\_)
- b.        Describe the additional or expanded public services and facilities that would be demanded of local government or special districts to serve the subdivision.

- i. Describe additional costs which would result for services such as roads, bridges, law enforcement, parks and recreation, fire protection, water, sewer and solid waste systems, schools or busing, (including additional personnel, construction, and maintenance costs).
  - ii. Who would bear these costs (e.g. all taxpayers within the jurisdiction, people within special taxing districts, or users of a service)?
  - iii. Can the service providers meet the additional costs given legal or other constraints (e.g. statutory ceilings on mill levies or bonded indebtedness)?
  - iv. Describe off-site costs or costs to other jurisdictions may be incurred (e.g. development of water sources or construction of a sewage treatment plant; costs borne by a nearby municipality).
- c. Describe how the subdivision allows existing services, through expanded use, to operate more efficiently, or makes the installation or improvement of services feasible (e.g. allow installation of a central water system, or upgrading a country road).
- d. What are the present tax revenues received from the unsubdivided land?
- i. By the County \$ \_\_\_\_\_
  - ii. By the municipality if applicable \_\_\_\_\_
  - iii. By the school(s) \$ \_\_\_\_\_
- e. Provide the approximate revenues received by each above taxing authority if the lots are reclassified, and when the lots are all improved and built upon. Describe any other taxes that would be paid by the subdivision and into what funds (e.g. personal property taxes on mobile/manufactured homes are paid into the County general fund).
- f. Would new taxes generated from the subdivision cover additional public costs?
- g. How many special improvement districts would be created which would obligate local government fiscally or administratively? Are any bonding plans proposed which would affect the local government's bonded indebtedness?

**4. Effects on the Historic or Natural Environment**

- a. Describe and locate on a plat overlay or sketch map known or possible historic, paleontological, archaeological or cultural sites, structures, or objects which may be affected by the proposed subdivision.
- b. How would the subdivision affect surface and groundwater, soils, slopes, vegetation, historical or archaeological features within the subdivision or on adjacent land? Describe plans to protect these sites.
  - i. Would any streambanks or lake shorelines be altered, streams rechanneled or any surface water contaminated from sewage treatment systems, run-off carrying sedimentation, or concentration of pesticides or fertilizers?
  - ii. Would groundwater supplies likely be contaminated or depleted as a result of the subdivision?

- iii Would construction of roads or building sites require cuts and fills on steep slopes or cause erosion on unstable, erodible soils? Would soils be contaminated by sewage treatment systems?
  - iv Describe the impacts that removal of vegetation would have on soil erosion, bank, or shoreline instability.
  - v Would the value of significant historical, visual, or open space features be reduced or eliminated?
  - vi Describe possible natural hazards the subdivision be could be subject to (e.g., natural hazards such as flooding, rock, snow or land slides, high winds, severe wildfires, or difficulties such as shallow bedrock, high water table, unstable or expansive soils, or excessive slopes).
- c. How would the subdivision affect visual features within the subdivision or on adjacent land? Describe efforts to visually blend the proposed development with the existing environment (e.g. use of appropriate building materials, colors, road design, underground utilities, and revegetation of earthworks).

## **5. Effects on Wildlife and Wildlife Habitat**

- a. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.
- b. Describe the effect that pets or human activity would have on wildlife.

## **6. Effects on the Public Health and Safety**

- a. Describe any health or safety hazards on or near the subdivision, such as: natural hazards, lack of water, drainage problems, heavy traffic, dilapidated structures, high pressure gas lines, high voltage power lines, or irrigation ditches. These conditions, proposed or existing should be accurately described with their origin and location identified on a copy of the preliminary plat.
- b. Describe how the subdivision would be subject to hazardous conditions due to high voltage lines, airports, highways, railroads, dilapidated structures, high pressure gas lines, irrigation ditches, and adjacent industrial or mining uses.
- c. Describe land uses adjacent to the subdivision and how the subdivision will affect the adjacent land uses. Identify existing uses such as feed lots, processing plants, airports or industrial firms which could be subject to lawsuits or complaints from residents of the subdivision.
- d. Describe public health or safety hazards, such as dangerous traffic, fire conditions, or contamination of water supplies which which would be created by the subdivision.

## **PART V COMMUNITY IMPACT REPORT**

Provide a community impact report containing a statement of estimated number of people coming into the area as a result of the subdivision, anticipated needs of the proposed subdivision for public facilities and services, the increased capital and operating cost to each affected unit of local government. Provide responses to each of the following questions and provide reference materials as required.

### **1. Education and Busing**

- a. Describe the available educational facilities which would serve this subdivision.
- b. Estimate the number of school children that will be added by the proposed subdivision. Provide a statement from the administrator of the affected school system indicating whether the increased enrollment can be accommodated by the present personnel and facilities and by the existing school bus system. If not, estimate the increased expenditures that would be necessary to do so.

### **2. Roads and Maintenance**

- a. Estimate how much daily traffic the subdivision, when fully occupied, will generate on existing streets and arterials.
- b. Describe the capability of existing and proposed roads to safely accommodate this increased traffic.
- c. Describe increased maintenance problems and increased cost due to this increase in volume.
- d. Describe proposed new public or private access roads including:
  - i. Measures for disposing of storm run-off from streets and roads.
  - ii. Type of road surface and provisions to be made for dust.
  - iii. Facilities for streams or drainage crossing (e.g. culverts, bridges).
  - iv. Seeding of disturbed areas.
- e. Describe the closing or modification of any existing roads.
- f. Explain why road access was not provided within the subdivision, if access to any individual lot is directly from arterial streets or roads.
- g. Is year-round access by conventional automobile over legal rights-of-way available to the subdivision and to all lots and common facilities within the subdivision? Identify the owners of any private property over which access to the subdivision will be provided.
- h. Estimate the cost and completion date of the system, and indicate who will pay the cost of installation, maintenance and snow removal.

### **3. Water, Sewage, and Solid Waste Facilities**

- a. Briefly describe the water supply and sewage treatment systems to be used in serving the proposed subdivision (e.g. methods, capacities, locations).

- b. Provide information on estimated cost of the system, who will bear the costs, and how the system will be financed.
- c. Where hook-up to an existing system is proposed, describe estimated impacts on the existing system, and show evidence that permission has been granted to hook up to the existing system.
- d. All water supply and sewage treatment plans and specifications will be reviewed and approved by the Department of Environmental Quality (DEQ) and should be submitted using the appropriate DEQ application form.
- e. Describe the proposed method of collecting and disposing of solid waste from the development.
- f. If use of an existing collection system or disposal facility is proposed indicate the name and location of the facility.

**4. Fire and Police Protection**

- a. Describe the fire and police protection services available to the residents of the proposed subdivision including number of personnel and number of vehicles or type of facilities for:
  - i. Fire protection -- is the proposed subdivision in an existing fire district? If not, will one be formed or extended? Describe what fire protection procedures are planned?
  - ii. Law --Enforcement protection – Which of --is the proposed subdivision within the jurisdiction of a County Sheriff or municipal police department
- b. Can the fire and police protection service needs of the proposed subdivision be met by present personnel and facilities? If not, describe the additional expenses that would be necessary to make these services adequate, and who would pay the costs?

**5. Payment for extension of Capital Facilities**

Indicate how the subdivider will pay for the cost of extending capital facilities resulting from expected impacts directly attributable to the subdivision.

**ADMINISTRATIVE MATERIALS "B"**  
**FINAL PLAT APPROVAL FORM**

Date \_\_\_\_\_

1. Name of Subdivision \_\_\_\_\_
2. Location: \_\_\_\_\_ 1/4 Section \_\_\_\_\_ Township \_\_\_\_\_ Range \_\_\_\_\_ For Amended Plats: Lot(s) \_\_\_\_\_ Block(s) \_\_\_\_\_ Subdivision
3. Name, address and telephone number of subdivider:  
\_\_\_\_\_  
\_\_\_\_\_
4. Name, address and telephone number of persons of firms providing services and information (e.g.: surveyor, engineer, designer, planning consultant, attorney):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Descriptive Data:
  - a. Gross area in acres \_\_\_\_\_
  - b. Number of lots or rental spaces \_\_\_\_\_
  - c. Existing zoning or other regulations \_\_\_\_\_  
\_\_\_\_\_
6. Date Preliminary Plat Approved: \_\_\_\_\_
7. Any Conditions? \_\_\_\_\_ (If Yes, attach list of conditions.)
8. Any Deed Restrictions or covenants? \_\_\_\_\_ (If Yes, attach a copy.)
9. All improvements installed? \_\_\_\_\_ (If No, attach a subdivision improvements agreement or guarantees.)
10. List of materials submitted with this application:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  
  - d. \_\_\_\_\_
  - e. \_\_\_\_\_
  - f. \_\_\_\_\_

I do hereby certify that all the statements and information and the statements and information contained in all exhibits transmitted herewith are true. I hereby apply to the (governing body) of (city or county) for approval of the final plat of (Name of Subdivision).

\_\_\_\_\_  
Subdivider

-----  
FOR OFFICIAL USE ONLY

1. Application Number \_\_\_\_\_
2. Date Application Submitted \_\_\_\_\_
3. Date by which Final Plat must be approved or rejected \_\_\_\_\_

**ADMINISTRATIVE MATERIALS “C”  
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 – County

Certificate of Final Plat Approval – City

Certificate of Filing by Clerk and Recorder

**Certificate of Completion of Public Improvements Agreement**

(To be submitted with application for approval of final subdivision plat)

**CERTIFICATE OF COMPLETION**

I, (Name of Subdivider), and I, (Name of Subdivider's Registered Engineer), a registered professional engineer licensed to practice in the State of Montana, hereby certify that the following public improvements, required as a condition of approval of (Name of Subdivision), have been installed in conformance with the attached engineering specifications and plans: (List the improvements actually installed.)

\_\_\_\_\_  
Signature of Subdivider

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Professional Engineer

\_\_\_\_\_  
Date

Registration No. \_\_\_\_\_

\_\_\_\_\_  
Address

(Engineers Seal)



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

I, (Name of City or Town Clerk), (County Clerk and Recorder) of (Name of City or County), Montana, do certify that the following order was made by the (Governing Body) of (Name of City or County) 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 (Name of Governing Body) 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 (Name of City or County), 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 or County), 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 County)

**Certificate of 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 County Treasurer) Treasurer,  
\_\_\_\_\_ County, Montana

**Certificate of Final Plat Approval – County**

The County Commission of \_\_\_\_\_ County, 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 Commissioners)

ATTEST:

(Signature of Clerk and Recorder)

(Seal of County)

\_\_\_\_\_, Montana

**Certificate of Final Plat Approval – City**

The (Commission) (Council) of the City (Town) of (Name of City or Town), 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 \_\_\_\_.

by (Signature of City or Town Clerk)  
Clerk

(Signature of Mayor)  
Mayor

**Certificate of Filing by Clerk and Recorder**

STATE OF MONTANA            )  
  ) ss.  
County of \_\_\_\_\_ )

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_\_ o'clock.

(Signature of Clerk and Recorder)

County Clerk and Recorder, \_\_\_\_\_ County, Montana

**ADMINISTRATIVE MATERIALS “D”  
SUBDIVISION IMPROVEMENTS AGREEMENT; GUARANTY**

**SUBDIVISION IMPROVEMENT AGREEMENT**

The parties to this Subdivision Improvements Agreement (“this agreement”) are \_\_\_\_\_ (“the subdivider”) and \_\_\_\_\_ (“the City” or “the County”).

WHEREAS, the subdivider desires to defer construction of improvements described in Attachment (\_\_\_); and

WHEREAS, the purpose of this Agreement is to protect the City (or County) 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 (or County) subdivision regulations.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Effective Date: The effective date of this Agreement is the date that final subdivision plat approval is granted by the City (or County).
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 (\_\_\_) of this Agreement. The Subdivider’s obligation to complete the improvements arises upon approval of the final subdivision plat, is not conditioned on the commencement of construction in the development or sale of any lots or improvements within the subdivision, and is independent of any obligations of the City (or County) contained in this Agreement.
4. Security: To secure the performance of his obligations under this Agreement, the Subdivider shall deposit with the City (or County) 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 (or County) 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 (or County) 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 (or County) as specified in Attachment (\_\_\_) 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 (or County) 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 (2) years 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's (or County's) Obligations

9. Inspection and Certification:
  - a. The City (or County) 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 (\_\_\_) of this Agreement. The inspection and certification, shall occur within 14 days of notice by the Subdivider that the improvements are complete and that he desires City (or County) inspection and certification. Before requesting City (or County) certification of any improvement the Subdivider shall present to the City (or County) valid lien waivers from all persons providing materials or performing work on the improvement.
  - b. Certification by the City (or County) does not constitute a waiver by the City (or County) 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 (or County) 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 (\_\_\_), or is otherwise defective. The Subdivider shall have 30 days from the date the notice is issued to remedy the defect. The City (or County) 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 (or County) accepts dedication of the improvements
11. Reduction of Security: After the acceptance of any improvement, the amount that the City (or County) 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 (\_\_\_). At the request of the Subdivider, the City (or County) 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 (or County) for the one year warranty period plus an additional 90 days.
12. Use of Proceeds: The City (or County) 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 constitute a default by the Subdivider during the completion period:

- a. failure to complete construction of the improvements within two years 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 is the reasonable cost of completing the improvements. For purposes of this Agreement the estimated cost of the improvements as specified in Attachment (\_\_) is 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 (or County) may 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 (or County) 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 (\_\_)] of all improvements previously certified by the City (or County). The City (or County) may complete improvements itself or contract with a third party for completion, or the City (or County) may assign the proceeds of the letter of credit to a subsequent subdivider who has acquired the Subdivision and who has the same rights of completion as the City (or County) if and only if the subsequent subdivider agrees in writing to complete the unfinished improvements.
  - b. In addition, the City (or County) may suspend final plat approval. During this suspension the Subdivider may not sell, transfer or otherwise convey lots or homes within the Subdivision without the express approval of the City (or County) until the improvements are completed and certified by the City (or County).
16. Indemnification: The Subdivider agrees to indemnify and hold the City (or County) 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 (or County).
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 (or County) 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, is 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 has any right of action under this Agreement, except that if the City (or County) 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 (or County) 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 is binding on the parties.

21. Time: For the purpose of computing the commencement and completion periods, and time periods for City (or County) action, times in which war, civil disasters, acts of God or extreme weather conditions occur will not be included if the events prevent the Subdivider or the City (or County) 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 the City (or County). Such approval may not be withheld unreasonably, but any unapproved assignment is void. There is no prohibition on the right of the City (or County) to assign its rights under this Agreement.

The City (or County) shall release the original Subdivider's letter of credit if it accepts a new security from any subdivider or lender who obtains the property. However, no action by the City (or County) constitutes 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 (or County) Official

\_\_\_\_\_  
Subdivider

## ACCEPTABLE FORMS OF IMPROVEMENTS GUARANTEES

### *Comment:*

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 fail to install the required 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 percent of the estimated total cost of installing all required improvements.

### 1. Letter of Credit

Subject to governing body approval, the subdivider shall provide the governing body a letter of credit from a bank or other reputable institution or individual certifying the following:

- a. That the creditor guarantees funds in an amount equal to 125% of the cost, as approved by the governing body, of completing all required improvements.
- b. That if the subdivider fails to complete the specified improvements within the required period, the creditor shall immediately pay to the governing body upon presentation of a sight draft without further action, an amount of cash necessary to finance the completion of those improvements, up to the limit of credit stated in the letter.
- c. That this letter of credit may not be withdrawn, or reduced in amount, until released by the governing body.

### 2. Escrow Account

The subdivider shall deposit cash, or collateral readily convertible to cash at face value, either with the governing body 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 governing body.

Where an escrow account is to be used, the subdivider shall give the governing body 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 governing body 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 governing body 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, must be established by a licensed real estate appraiser or securities broker, as applicable, at the subdivider's expense. The governing body 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. Enter an agreement with the escrow agent instructing the agent to release the property to the governing body in the case of default. The agreement must be placed on file with the county clerk and recorder.
- b. File with the governing body 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 governing body 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 governing body.

#### 4. Sequential Development

Where a subdivision is to be developed in phased portions, the governing body may, at its discretion, waive the use of a guarantee on the initial portion, provided that the portion contains no more than 25 lots, or 50 percent of the total number of lots in the proposed subdivision, whichever is less. The governing body may grant final plat approval to only one portion at a time. The plat approval for each succeeding portion will be contingent upon completion of all improvements in each preceding portion and acceptance of those improvements by the governing body. Completion of improvements in the final portion of the subdivision must be guaranteed through the use of one of the other methods detailed in this section.

#### 5. Surety Performance Bond

The bond must be executed by a surety company authorized to do business in the State of Montana and acceptable as a surety to the governing body and countersigned by a Montana agent. The bond must be payable to the County (City) of \_\_\_\_\_. The bond must be in effect until the completed improvements are accepted by the governing body.

#### 6. Special Improvements District

The governing body 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 shall 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 board of county commissioners 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 county clerk and recorder and shall be deemed to run with the land.

***Comment:***

*Local officials should be cautious in accepting special improvement districts or rural improvement districts as forms of improvements guaranties. In a number of cases in Montana, the subdivider has been unable to pay the assessments, and the city or county has had to bear the cost of completing the required improvements. These problems occur most frequently where improvement districts are formed as a means to provide improvements on raw land, and local officials may want to avoid creating improvement districts for undeveloped property.*

*Local officials should consult a bond underwriter before accepting an improvement district as a form of improvements guaranty.*

*Letters of credit may be revocable, so it is important to express that the letter of credit is irrevocable. Because the letter of credit does not incorporate the subdivision improvement agreement, the issuer of the credit cannot raise objections to the demand for payment. If the letter of credit specifies that the local government need only present a signed statement or affidavit that the subdivider is in default, the local government need not present proof of default or signed statements from any other party.*

*Under the letter of credit the local government is committed to use the funds for completion of the improvement.*

*It is important that the expiration date of the letter of credit allows the local government a reasonable amount of time after the improvements completion deadline to inspect the improvements and, if defects are found, prepare proper drafts and present a notice of default to the lending institution.*

*Lending institutions may be reluctant to issue letters of credit to be in force for long periods of time. Typically, improvements can be completed in 18-24 months, and an additional 1 year warranty period is appropriate to allow the local government to monitor for defects or failures. Following the warranty period an additional 90 days is reasonable to give local officials time to submit any drafts and documentation to draw funds, if necessary.*

*A "sight draft" commits the payor to make payment at the time the draft is presented, or on sight. Other types of drafts allow a waiting period or approval before the payor must make the payment.*

**MODEL**

**IRREVOCABLE LETTER OF CREDIT**

Letter of Credit No. \_\_\_\_

Name of Local Government  
Address

Date

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 stated, 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)



