

# City of Thompson Falls



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Dear Pine Tree Hollow Homeowners Association,

The following letter is being provided on behalf of the City of Thompson Falls (the "City") and is intended to again request that you return signed copies of the previously provided USER AGREEMENT & TEMPORARY CONSTRUCTION EASEMENT FOR SEWER CONNECTION.

This Letter further provides you with: 1) a detailed description of the sewer expansion project history; 2) the City's legal authority to levy special assessments against parcels located within the municipal boundaries to service the debt for the sewer expansion project; and 3) the City's legal authority to require your property to connect to the sewer system, to charge monthly sewer system rates, and to collect any unpaid special assessments and rates along with interest and penalties due and owing with the property taxes due on the parcels. The City does not anticipate needing to resort to legal process to recover your share of the costs of this sewer system expansion and to accomplish connection of your property to the system, but the City wishes to convey that it has the authority to do so, if necessary.

## 1. Sewer Project History

The City of Thompson Falls hired Great West Engineering in November 2016 to prepare a Preliminary Engineering Report (PER) for the City's wastewater system. The City identified a community need for the proposed project during this process. A large portion of the community of Thompson Falls is currently served by private septic systems, including approximately 560 residential homes and three schools. These systems are often not in compliance with today's regulations and many are failing due to substandard installations, small lot sizes and limitations within City limits. Substandard systems are incapable of reducing nutrients and pathogens to safe levels. This creates a significant human health and safety issue. For example, such failures and hazards have been documented on and near school property.

Throughout the PER process, alternatives for the improvements to the existing collection system and expansion to serve the unsewered area of the City were vetted before deciding on the recommended alternative. Public meetings were held in August 2017, February 2018, March 2018, and May 2018.

The PER was completed in January 2018, revised in April 2018 and submitted for grants in May and June of 2018.

The City completed Phase 1 and Phase 2 2024. These first two phases included treatment system upgrades as well as expanding the sewer collection system to the area commonly referred to as the "hill" or the

north side of the railroad tracks. For the first two phases the collection system was expanded from Wood St. to Grove street, with the remaining area within the City limits to be completed in Phases 3 & 4. The collect system expansion of Phases 1 and 2 also included three new lift stations and associated force main, replacement of some existing gravity and force mains within the original sewer collection system on the south side of the railroad tracks.

The City received a generous grant/loan funding package from Rural Development (RD) in August 2021 for Phase 3 and 4 outlined in the PER. The RD package included \$10,927,00 of grant funds, and generous low-interest loans at a rate of 1.375% for \$4,793,000. The City has also obtained additional grant funding from the Montana Coal Endowment Program in the amount of \$750,000; the Montana Department of Natural Resources and Conservation through a Renewable Resource Grant in the amount of \$125,000; Community Development Block Grant in the amount of \$450,000.

As part of its generous funding package RD required that a portion of the Project be financed with bonds secured by special assessments to be levied by Special Improvement Districts created pursuant to Title 7, Chapter 12, Parts 41 and 42. Section 7-12-4161, MCA, provides that “to defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the city council or commission shall adopt one of the methods of assessment, where applicable, provided in 7-12-4162 through 7-12-4165 for each improvement to be made or acquired for the benefit of the district.” The City held a multiyear series of informational public meetings beginning on January 7, 2019, in addition to the previously noted public meetings held during the PER process, to describe the conclusions from the PER and the reasons for considering an expansion of the wastewater collection system to those properties north of the railroad tracks. Questions and suggestions were considered from public members at this meeting.

Specific to Phase 3 and 4 of the Project: the City held a noticed public meeting on December, 12 2022 for the purpose of hearing public comments on the City’s proposed Resolution of Intention to Create Wastewater Special Improvement District (SID) Number 3 and 4. The resolutions proposed to create special improvement districts pursuant to § 7-12-4102, MCA, for the purpose of funding the Project and proposed to levy special assessments against parcels located in the district in an equal amount per parcel pursuant to § 7-12-4162(3)(a), MCA. Section 7-12-4162(3)(a), MCA, provides that “[t]he city council or city commission may assess each lot or parcel of land in the district an equal amount based upon the total cost of the improvement.”

The resolutions of intention to create the two SIDs described the boundaries of SID 3 and 4 with an Exhibit A, a detailed map depicting all parcels to be included and assessed in the District, and an Exhibit B, a list that contains the address, legal description, owner, other identifying information for each parcel to be included in the District, the estimated total principal to be assessed against each parcel over the term of the bond, and the estimated annual assessment to be levied against each parcel. Both Exhibits were presented at the meeting, discussed and commented upon by the many public members that attended the meeting.

Exhibits A and B for SID 4 both clearly depicted and identified the lots owned by Pine Tree Hollow Homeowners Association. Resolution no. 823 creating SID 4 stated that the estimated annual assessment for each parcel of land for the Improvements was \$ 279.00, payable over 20 years, which includes estimated average interest on the Bonds plus ½ of 1%, as required by Section 7-12-4189(1)(a), MCA—with the estimated total principal assessment per parcel in the District being \$4,687.50.

Resolution 823 provided that at any time within 19 days from and after the date of the first publication of the notice of the passage and approval of the resolution of intention to create SID 4, that any owner of a Parcel within the District subject to assessment for the cost and expense of making the Improvements may make

and file with the City Clerk until 5:00 p.m., on the expiration date of said 22-day period (January 3, 2023), a written protest against the proposed Improvements or against the creation of the District or both. The Resolution then provided that the Council would on January 9, 2023, at 6 p.m. (its next regular meeting) after the expiration of the 19-day comment/protest period hold a hearing on the protests submitted.

The City Clerk then published a copy of the notice of the passage of Resolution 822 (SID 3) and of Resolution 823 (SID 4) in the Sanders County Ledger on December 15 and December 22, 2022, and mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having Parcels within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his or her last-known address, on or before the same day such notice was first published. The Notice, published twice and mailed to all owners of property, provided as follows (the following is for SID 4):

**NOTICE OF INTENTION TO CREATE WASTEWATER SPECIAL IMPROVEMENT DISTRICT NO. 4, CITY OF THOMPSON FALLS, MONTANA**

NOTICE IS HEREBY GIVEN on December 12, 2022, the City of Thompson Falls, Montana, passed Resolution No. 823, which is a resolution of intention to create City of Thompson Falls Wastewater Special Improvement District No. 4. The City proposes to create Wastewater Special Improvement District No. 4, which will generally include as properties in the City North of Highway 200 up to the northern boundary of the City limits and extending from the west end of Wastewater Improvement District No. 3 eastward to the eastern boundary of the City, a group of properties adjacent to Bighorn Drive and Grizzly Drive, as well as other noncontiguous benefitted parcels depicted on Exhibits A and B of Resolution No. 823, as the proposed Special Improvement District. For a detailed description of the boundaries of, and the lots included in, Wastewater Special Improvement District No. 4 (the "District") and the wastewater improvements thereto, which are generally described as construction and installing new sewer service connections to properties in the District, abandonment of existing septic systems in the District and restoration of surface disturbances caused by the foregoing (the "Improvements") refer to the aforesaid resolution on file with the City Clerk at 108 Fulton Street, Thompson Falls, Montana.

The estimated cost of the Improvements, including all incidental costs is \$750,000, which is anticipated to be paid from a District Wastewater Special Improvement District No. 4 Bond (the "Bond").

Each Parcel of land as described by map parcel number, parcel ID number (GEO Code), parcel tax ID Number street address and legal description in Exhibit A and B of Resolution No. 823 (a "Parcel") in the District will be assessed an equal amount based upon the total cost of the Improvements as authorized in Section 7-12-4162(3)(a) Montana Code Annotated. The estimated annual assessment for each Parcel of land for the Improvements is \$279, payable over 20 years, which includes estimated average interest on the Bond plus ½ of 1%, as required by Section 7-12-4189(1)(a) Montana Code Annotated. The estimated total principal assessment per Parcel in the District is \$4,687.50. As provided in Section 7-12-4162(3)(b), MCA, if an increase occurs in the number of benefitted Parcels within the boundaries of the District during the term of bonded indebtedness that is payable from the assessments, the City Council shall recalculate the amount assessable to each Parcel. The City Council shall base the recalculation on the amount of the District's outstanding bonded indebtedness for the current fiscal year and shall spread the assessments across the District based on the number of benefitted Parcels within the boundaries of the District as of July 1 following the action that resulted in the increase in the number of benefitted Parcels.

At any time within nineteen (19) days from and after the date of the first publication of the notice of the passage and approval of Resolution No. 823 by the City, any owner of a Parcel within the District subject to assessment for the cost and expense of making the Improvements may make and file a written protest against the proposed Improvements, or against creation of the District or both. Such protest must: be in writing; identify the Parcel owned by the protestor; be signed by all owners of such Parcel; and be filed with the City Clerk by 5 PM on January 3, 2023. The City Council will, hold a Public Hearing on January 9, 2023 at the City Hall, 108 Fulton Street, Thompson Falls, MT, at 5 PM, to hear all such written protests

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so made and filed. The City will further provide an opportunity for verbal comments from opponents and proponents about the formation of the Sewer Improvement District 4; however, as required by Montana law, only the aforementioned written protests submitted by the January 3rd deadline will be considered in the final count of protests against creation of the District. After the Public Hearing, the regular meeting of the City Council will proceed.

For more information, or to review a copy of Resolution No. 823, contact the Clerk at the address and phone number below.

Pursuant to § 7-12-4113(3), MCA, when the Improvement is a sewer project the City is authorized to vote to overrule the public protest and proceed with the creation of an SID and the levying of assessments so long as the protests received do not represent the owners of property in the district to be assessed for more than 75% of the cost of the district.

On January 9, 2023, the adjourned hearing on the creation of SID 1 and 2 was resumed and having further considered the submitted protests and public comments, the City voted to proceed with the creation of SID 3 and 4, having found that the owner of 1 parcel of the 186 total parcels in the proposed SID 3 and the owners of 2 parcels of the 160 total parcels in the proposed SID 4 filed written protests against the creation of the Districts, and that those property owners constituted approximately 0.5% of the cost of the improvements in SID 3 and 1.2% of the cost of the improvements in SID 4. Thus, the City Council determined, pursuant to § 7-12-4113, MCA, there had been less than a 75% protest and the protests were thereby insufficient to halt further proceedings on the creation of SID 3 and SID 4. SID 3 and SID 4 were created on January 9, 2023, via passage of Resolution Nos. 825 and 826, with an estimated annual assessment for each parcel in SID 4 of \$279.00.

**During this whole process no protests were received from you.**

Section 7-12-4112, MCA, provides that “the city or town council or commission after the expiration of the time within which said protest may be made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive.” Having finally and conclusively created SID 3 and SID 4, the City is now proceeding to issue a Bond Anticipation Note to the Montana Department of Natural Resources and Conservation for purposes of providing interim financing for the sewer project, to be paid off with the RD bonds secured by the special assessments from SID 3 and SID 4.

The construction phase of the sewer project is expected to be completed in 2026 with the first semi-annual special assessment payments for parcels located in SID 1 and SID 2 due in November 2025. To date, the City has not received a signed construction easement and user agreement from you, but the assessments will be levied against you property located at Pine Tree Hollow Homeowners Association at the rate of \$279.00 annually per parcel located in SID 4 in November 2025 *regardless* of whether such agreements are signed and returned.

## **2. Legal Authority to Levy Special Assessments on Property**

The Montana Supreme Court established the rule that all properties, even those owned by other local government entities such as school districts, shall be liable for special assessments for public sewer utilities over 100 years ago. The *City of Kalispell v. School District No. 5*, 45 Mont. 221, 122 P. 742 (1912), is a seminal case which has been cited across the country by other states holding that all properties located within municipal boundaries are subject to special assessments for public utilities. The Kalispell case involved three SID special assessments levied against the school district, including a special assessment for the construction of a sewer. Here is some of the key language:

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"Our statute authorizing these special assessments provides in general terms that they shall be paid by the entire improvement district; each lot or parcel of land within the district to be assessed for that part of the whole cost which its area bears to the area of the entire improvement district.... **This language is general. It includes all the property within the improvement district; and we are not at liberty to ingraft upon the statute exceptions which are not there.**"

So, it is undisputed that your property is subject to the special assessments which will be levied against it beginning in November 2025. It will be assessed for 18 parcels at the rate of \$279.00 annually per parcel. Property owners had the opportunity to submit protests or submit public comments and to aggregate its lots prior to creation of SID 3 and 4 during the public comment period or at the public hearing to the creation of the District. Hundreds of property owners took advantage of this opportunity for public participation in the SID 1, 2, 3, and 4 process, and dozens of lots were determined not-developable and thus, not included in the SIDs or were aggregated during this process. You had many options available to work with the City during the public comment period. You received notice of the public comment period and the public hearings. You chose not to protest creation or submit comments in writing or in person at the public hearing on the resolution of intention to create the district or at the public hearing on the resolution creating the district.

Now well over two years later, after the special improvement district has been created and debt and contractual obligations have been incurred, the City simply has no ability to change the number of parcels allocated or the amount of the assessment. If the City were to do that, it would likely be acting outside of its statutory authority, would violate the due process rights of every other member of the special improvement district by increasing their assessments to cover for you after the time for public comments has closed and the District and assessments were created, and (because creation of the SID was a condition precedent to incurring debt) place the City at risk of invalidating the assessments which are necessary to pay debt which is already pledged to the City.

### **3. Legal Authority to Charge Monthly Rates, Require Connection to the System, and Collect Any Unpaid Debt**

The Montana Supreme Court has established that municipalities may mandate connection to public utilities and bring charges for violation of public health ordinances against those that refuse to do so. *See generally, Ennis v. Stewart, 247 Mont. 355, 807 P.2d 179 (1991)*. The Court very clearly rejected the argument that municipalities are required to show an impending health risk in order to mandate such a connection:

**While the Town does not allege that there are immediate health threats arising from the use of private well water in Ennis, the potential for such problems always exists.** A municipal water system is better suited to meet these health concerns and prevent potential health problems that could arise absent such a system. Furthermore, in small communities a water system may not be affordable unless a sufficient number of citizens connect to the system and pay the corresponding fee. **Allowing some citizens to forgo connection to such a system indefinitely or until a health threat is imminent may make such a system unaffordable to the community and thereby defeat the purpose of preventing potential health problems before they arise.** Sound public policy considerations indicate that the ordinance in question here is rationally related to the legitimate purpose of providing a healthy and safe water supply.

*Town of Ennis v. Stewart, 247 Mont at 362, 807 P.2d at 183-84 (emphasis added).*

Moreover, the City has the statutory authority to charge monthly rates to you as property owner once service is available even if there were to be some delay in the actual connection of your property while the City progresses through the legal process necessary to force connection to the system. Section 69-7-101, MCA, empowers municipalities to charge rates for municipal utilities to all their "inhabitants." Moreover, § 7-13-4304(1), MCA, provides that municipalities "shall" fix charges for all "benefits *directly or indirectly* afforded by the system." See, e.g. *Lechner v. Billings*, 244 Mont. 195, 206, 797 P.2d 191, 198 (1990) (providing a broad reading of indirect benefits and acknowledging they extend beyond the direct benefit of service by the specific utility). Hired?

Your property will receive both direct and indirect benefits from the expanded sewer system, above and beyond its connection to the sewer system. For example, having the sewer system available to your property for connection provides a benefit in the form of a reliable central sewer option. Your property receives further indirect benefits from the system because neighboring properties with various recorded instances of failing/failed septic systems and/or drainfields will now be connected to a central sewer system and not threaten your property with contamination. Contamination of the public school was already occurring, and those health threats to the school district in which your property is located have been eliminated.

If necessary, § 7-13-4309(4), MCA, authorizes the City to bring suit "to collect the amount due and owing, including penalties and interest, as a debt owing the city or town." So there is no doubt regarding the City's legal authority to require your property to connect to the sewer system, to charge monthly sewer system rates, and to collect on a judgment for any unpaid special assessments and rates along with interest and penalties due and owing.

### CONCLUSION

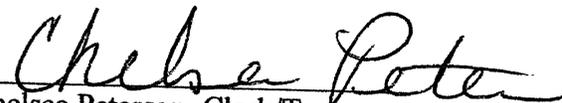
The City's sewer expansion project has afforded the entire City with an excellent source of safe and reliable sewer treatment, at an extraordinarily low price from the community (with the vast majority of the costs being grant funded). The City has acted transparently, collaboratively, and legally during every step of its current sewer expansion project.

The time has come for you to comply with applicable state and local law and sign the USER AGREEMENT & TEMPORARY CONSTRUCTION EASEMENT FOR SEWER CONNECTION previously provided. The City requests such signed Agreements be returned by May 23, 2025.

Yours very truly,

  
\_\_\_\_\_  
Russlyn Leivestad, Mayor

ATTEST:

  
\_\_\_\_\_  
Chelsea Peterson, Clerk/Treasurer