



City of Libby
Libby Montana
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REGULAR COUNCIL MEETING #1701
MONDAY, MAY 18, 2026 @ 7:00 PM
COUNCIL CHAMBERS – CITY HALL

CALL TO ORDER:

- Pledge of Allegiance
- Prayer by Billy Day
- Roll Call
- Welcome/Announcements
- Approve minutes for Council Meeting #1698 dated April 6, #1699 dated April 20, and #1700 dated May 4, 2026.

REPORTS:

DEPARTMENT HEADS:

- City Administrator

COUNCIL COMMITTEES:

- Building
- Cemetery/Parks
- Fire
- Lights/Streets/Sidewalks
- Ordinance
- Water/Sewer
- Wildlife Management

OTHER BOARDS/COMMITTEES:

- Shade Tree

PUBLIC COMMENT ON NON-AGENDA ITEMS: This is an opportunity for the public to offer comments related to issues that are not currently on the agenda that the council has jurisdiction over. Public comment is limited to 3 minutes.

PUBLIC HEARING – 1208 NEVADA - VARIANCE REQUEST, BOARD OF ADJUSTMENTS:

- Introduction of Variance request.
- Council discussion/questions.
- Public comment.
- Decision on Variance Request.

PUBLIC HEARING – HABITAT HOMES - VARIANCE REQUEST, BOARD OF ADJUSTMENTS:

- Introduction of Variance request.
- Council discussion/questions.
- Public comment.
- Decision on Variance Request.

NEW BUSINESS: The mayor will introduce each new agenda item with a description of the item and an explanation for the recommended action to be taken. Following council discussion on each item, there will be an opportunity for public comment. Public comment is limited to 3 minutes concerning the agenda item being discussed only.

1. Approve amendment to Skate Park project – replacing two approved benches with one picnic table.
2. Approve Logger Days Fun Run 5K Event and Route on June 20th – Sarah Long.
3. Approve Engineer Services for 1st and Montana Lift Station.
4. Approve CDBG Planning Grant.
5. Approve Planning activities.
6. Approve City Administrator Sikes as designated Environmental Certifying Official.
7. Approve all claims received to date.
8. Approve all business license applications received to date.
 - a. Edgewater Land Service LLC, 95 Edgewater Dr., LLC, Landscaping, debris removal, and stump grinding.
 - b. The Hidden Chapel, 1207 Utah Ave., LLC, Event space with commercial kitchen.
 - c. Mountain Fitness Co., 649 Champion Haul Rd. S., Individual, Fitness instruction.
 - d. Plum-Tech Plumbing & Heating, 150 Remps Rd, LLC, Plumbing and heating repair, maintenance, and installation.

UNFINISHED BUSINESS: Each item will be introduced by the mayor (or assigned liaison) with a description of the item. Following council discussion on each item, there will be an opportunity for public comment. No action will be taken. Public comment is limited to 3 minutes concerning each item.

GENERAL COMMENTS FROM COUNCIL: Public comment will not be taken during this portion of the meeting

ADJOURNMENT:

The manner of Addressing Council:

- Each person, not a Council member, shall address the Council at the time designated in the agenda or as directed by the Council, by stepping to the podium or microphone, giving that person's name and address in an audible tone of voice for the record, unless further time is granted by the Council, shall limit the address to the Council to three minutes.
- All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff with no personal remarks allowed.
- No person, other than the Council and the person having the floor, shall be permitted to enter any discussion either directly or through a member of the Council, without the permission of the Presiding Officer.

- Any person making personal, impertinent, or slanderous remarks or who shall become boisterous or disruptive during the council meeting shall be forthwith barred from further presentation to the council by the presiding officer unless permission to continue is granted by a majority vote of the council.

ATTENTION:

To access this meeting electronically with **ZOOM**,

Dial: 253-215-8782

Meeting ID: 4042719951

Password: 151041

Posted: 5/14/26

MCA 2-3-212. Minutes of meetings. Minutes must include without limitation: (a) the date, time, and place of the meeting; (b) a list of the individual members of the public body, agency, or organization who were in attendance; (c) the substance of all matters proposed, discussed, or decided; and (d) at the request of any member, a record of votes by individual members for any votes taken.

UNAPPROVED MINUTES

The Libby City Council held regular meeting #1698 on Monday, April 6, 2026, in the Council Chamber at Libby City Hall.

Call to Order:

The meeting was called to order at 7:00 pm by Mayor Taylor.

Present were Mayor Taylor, Councilors Brooke Bolin, Gail Burger, Brian Crompton, Ethan Kolp, Deputy Administrator Gary Beach, Clerk/Treasurer Leann Monigold, and (via Zoom) Councilor Erica Schaefer and City Attorney Dean Chisholm. Councilor Brian Zimmerman was not in attendance.

Announcements: None

Approve minutes for Regular Council meeting #1697 dated March 16, 2026:

Councilor Bolin **MADE A MOTION** to approve council minutes 1697, Councilor Kolp **SECONDED**.

Public Comment: None

Councilors Bolin, Burger, Crompton, Kolp, and Schaefer voted **FOR**.

MOTION PASSED.

Department Head Reports:

Administrator: Deputy City Administrator Gary Beach reported the lower reservoir is holding up well under current runoff levels. An RFQ is expected to go out this week for geotechnical and dam-certified engineers to design the repair and replacement of the northern wall, estimated at \$2.6 to \$2.8 million to restore it to previous functional capacity.

Regarding disaster funding, three options are being pursued. Option one — if the President signs a disaster recovery declaration, the city would receive reimbursement for both emergency protective measures and the northern wall repair; however, over 25 declarations are currently pending and the outcome is unknown. Option two — the city is working with Montana DES to request emergency funding, seeking reimbursement for the \$918,000 spent to date on emergency protective measures and potentially an additional \$500,000; the state distributes only \$13 to \$14 million annually statewide and is careful to

spread funds across as many communities as possible. Option three — a joint meeting with USDA Rural Development and Montana DES is scheduled within the next few weeks to discuss funding for the northern wall repair, with the hope that USDA can cover up to \$500,000 in grant funds using Montana DES funding as a match.

A \$2.5 million grant application submitted to Representative Zinke's office for water filtration tank repairs at the water treatment plant has been selected and is moving forward to the House Appropriations Committee. The final amount may be reduced, but more information is expected in the coming months.

The sewer PER is progressing well and should be complete within 30 days. The city engineer is working to locate rental flow meters that do not require confined space entry into manholes to get more accurate sewer flow data and better prioritize future main replacements.

The city has received an NRDP extension and will be going out for bids to convert the spoils pile at the upper reservoir into a parking lot as previously approved. Bid documents will specify that if bids exceed the remaining NRDP grant amount, the project will not be awarded unless additional funds become available.

Phase two of the Spruce Street reconstruction is complete with the exception of a punch list of discrepancies. The city is working with the contractor on corrections.

Mr. Beach reviewed several recently passed state bills of note. House Bill 629 expands the city's role in requiring subdivisions within 500 to 1,000 feet of municipal water and sewer infrastructure to connect to city services, removing the previous county waiver option. House Bill 492 updates local parking zoning provisions, limiting the city to requiring only one parking space for single-family dwellings, effective before October 1, 2026. House Bill 38 increases fines for misuse of accessible parking from \$100 to \$150 for a first offense and \$250 for a second offense. House Bill 819 places new restrictions on flags and banners displayed on government property. Senate Bill 243 addresses building heights but does not apply to Libby as it targets cities with populations over 5,000.

Streets: Justin Williams reported for the month of March: workforce event banners hung on Mineral and California Avenues in coordination with Montana Sky and the Streets Department; two cemetery openings, both full remains; two service line repairs including removal of a lead gooseneck; water line installation at Fireman's Park campground completed with two valves placed; 18 signpost bases shortened in the downtown corridor to reduce breakaway height; sweeping, jetting, and pothole patching ongoing; two sidewalk replacements near Larch Street, one 150-foot section with ADA ramp and one 200-foot section with ADA ramp; windstorm cleanup involving six downed trees and 66 hours of crew time; one hazardous tree removal on Main Street; one stop sign repair at the Empire Foods parking lot with two small concrete blocks installed for protection.

On Friday the 13th at 8 pm the crew was called out due to a contractor augering through a water service line being discovered and repaired back to the main with a new curb stop, wrapping up at 3 am Saturday morning. Fireman's Park campground inspection completed; teeter totter replaced with new boards and hardware and picnic tables under both pavilions rebuilt and painted. On the 20th, Mr. Beach and Mr. Williams responded to the lower reservoir where the new access road had sloughed, removing trees and clearing the area. High water concerns regarding the temporary cofferdam were addressed with Noble's assistance, with water receding 8 to 10 inches. Cabinet Heights Road ongoing repairs continue. A meeting was held with Golf Club board members regarding ongoing water issues at the Cabinet Heights and Country Club Road bank intersection, with a mitigation plan identified. One sewer manhole repair at Rosauers. Four safety meetings held covering unsafe working conditions, trailer towing, accident hazard reporting, and motorcycle awareness. Two DEQ outfall discoveries mitigated by constructing sediment sumps and installing silt fence. One employee returned to work with no restrictions following two weeks of surgical recovery.

Police: Sergeant Luthey reported for March: 250 calls for service and officer-initiated activity, including 62 traffic stops with 8 citations issued for hazardous moving violations, approximately 13 arrests, and 13 business walkthroughs. The department was awarded a \$50,000 Montana Emergency Tourism Assistance Program grant toward the purchase of a new patrol car; funding details are expected within the next couple of weeks. Tires on Unit 245 were replaced at a cost of \$1,342 after all four fell below the 3/32 tread mark. Code enforcement has been initiated at several locations on Minnesota, California, Crow, and Larch for miscellaneous debris and disabled vehicles.

Clerk/Treasurer: Clerk/Treasurer Monigold reported the annual audit has begun and results are expected within a couple of months and will be posted online when available. Budget preparation is ongoing with the first budget meeting anticipated for the end of April. Workers' compensation quotes are being solicited following MMIA's decision to end their program, with responses expected by mid-April to be presented to council.

Committee Reports:

Shade Tree Board: Councilor Kolp reported a meeting is scheduled for Wednesday, April 8 at 4:15 pm. Saturday, April 11 at 10 am, volunteers are needed for a pruning workshop to assess tree conditions around the city. Arbor Day is April 24 with a celebration and tree planting at Fireman's Park at 3 pm, including free tree saplings and educational activities.

Public Comment Non-Agenda:

Kyle Henderson expressed concern about water and sewer billing rates, noting his bill was \$110.63 on only 500 gallons of usage during the boil order period and questioned how sewer charges are calculated without a meter. Mayor Taylor suggested he contact Administrator Sikes directly to have the charges explained.

New Business:

Chamber of Commerce Update - Montana Tourism Development Grant:

Bruce Vincent representing Libby Area Chamber of Commerce, provided an update on the Montana Tourism Development Grant. Over the past year the Chamber convened public meetings and formed a stakeholder advisory group of 10 to 15 members, including Mineral Avenue businesses, event coordinators, the Heritage Museum, and the city and county. Approximately 15 to 20 project ideas were generated and scored by the advisory group. The highest-scoring projects aligned closely with the WGM Mineral Avenue improvement plan, including sidewalk and ADA improvements, lighting and irrigation upgrades, pedestrian safety enhancements, and visitor center improvements. The grant application was submitted in December and the grant has been awarded, the first phase of \$1.25 million. Year one will focus on planning in partnership with the city and WGM with minimal disruption to businesses; year two may include some implementation. A meeting is scheduled in Missoula on June 9 with the Chamber and the Department of Commerce to discuss the framework. Upon satisfactory completion of years one and two, an additional \$1.5 million will be available to complete the work. Mr. Vincent encouraged community members with other project ideas to continue developing them as other funding opportunities may be available.

Public Comment: None

VFW – Flag Program request to have flags up Memorial Day thru Labor Day:

Gordie Hull, representing the Libby VFW, requested council approval to fly flags on Mineral Avenue, California Avenue, and the Randolph Bridge from Memorial Day (May 25) through Veterans Day (November 12). Flags will be displayed 24 hours a day using holders on Flathead Electric light posts. An MDT encroachment application has been submitted for flags on Highways 2 and 37 through contact Jesse Gascon. The VFW will take full responsibility for upkeep, maintenance, and replacement of all flags and asked whether annual approval would be required or if a multi-year authorization was possible.

Council discussed how long of a term would be the best.

Councilor Burger **MADE A MOTION** to approve the VFW flag program from Memorial Day to November 12 for the next four years. Councilor Bolin **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer voted **FOR**.

MOTION PASSED.

Approve submittal of Readiness Information Form to MDT for street sweeper - CMAQ/MACI grant program:

Deputy City Administrator Beach reported the city received an MDT grant invitation on March 27 to replace the city's 1994 Elgin street sweeper, with an application deadline of April 3. Due to the short timeline, Mr. Beach coordinated internally and completed the application, noting council approval of the local match was needed. The replacement is a 2018 Schwartz A7 Tornado regenerative air sweeper with approximately 10,000 miles and 1,500 hours, priced at \$104,737 all-inclusive with delivery and one day of training, compared to approximately \$400,000 for a new unit. The local match is 13.42%, approximately \$14,053.79, with the remainder covered by the CMAQ MAC I program. Match funding is available from the Gas Fund, CIP, or Water, Sewer, and Streets accounts. The city expects to know if selected by early the following week; purchase orders are due by June 30.

Councilor Burger inquired where the local match would come from. Mr. Beach confirmed several accounts are available and no single account would be significantly impacted.

Mayor Taylor inquired whether shipping was included. Mr. Beach confirmed the \$104,737 includes delivery to Libby and one day of complimentary training.

Councilor Burger **MADE A MOTION** to approve the purchase of the street sweeper and the local match. Councilor Kolp **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer voted **FOR**.

MOTION PASSED.

Approve Lights, Street, Sidewalks Committee Recommendations:

Councilor Burger reported the Lights, Streets & Sidewalks Committee met on March 18 and is submitting two recommendations for council approval.

Recommendation one: authorize the annual sidewalk program to be put out to bid on a yearly basis to ensure competitive pricing and maximize how far sidewalk program funds can stretch. The committee vote was unanimous.

Recommendation two: authorize pedestrian safety improvements on Spruce Street, including up to two pedestrian crossing signs at designated crossings, a 20 mph speed limit

between Highway 2 and the Port gate, and no parking signs on the south side of Spruce Street from approximately the public restrooms to the end of Second Court. The committee vote was unanimous.

Mayor Taylor noted for those unfamiliar, Spruce Street is the street directly behind City Hall, with the road now paved, traffic coming out of the Nomad building is using it more frequently.

Public Comment:

Jonathan Jameson commented the crosswalk across Highway 2 is on the opposite side from where the sidewalk is located, creating an awkward pedestrian transition, and suggested the city look at that connection.

Councilor Bolin **MADE A MOTION** to approve the Lights, Streets & Sidewalks Committee recommendations. Councilor Kolp **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer voted **FOR**.

MOTION PASSED.

Approve all claims received to date:

Councilor Kolp noted a small typo on the payment to the County Treasurer, convictions is misspelled.

Councilor Kolp **MADE A MOTION** to approve all claims received to date, Councilor Crompton **SECONDED**.

Public Comment: None

Councilors Bolin, Burger, Crompton, Kolp, Schaefer voted **FOR**.

MOTION PASSED.

Approve all business license applications received to date:

Stout Construction and Sumer's Services

Councilor Burger **MADE A MOTION** to approve all business license applications received to date, Councilor Crompton **SECONDED**.

Public Comment: None

Councilors Bolin, Burger, Crompton, Kolp, Schaefer voted **FOR**.

MOTION PASSED.

General Comments from Council: None

ADJOURNMENT:

Councilor Kolp **MADE A MOTION** to adjourn, Councilor Crompton **SECONDED**.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer voted **FOR**.

MOTION PASSED.

Mayor Taylor adjourned the meeting at 7:45 pm.

Mayor Hugh Taylor

Attest: _____

Clerk/Treasurer Leann Monigold

DRAFT

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UNAPPROVED MINUTES

The Libby City Council held regular meeting #1699 on Monday, April 20, 2026, in the Council Chamber at Libby City Hall.

Call to Order:

The meeting was called to order at 7:00 pm by Mayor Taylor.

Present were Mayor Taylor, Councilors Brooke Bolin, Gail Burger, Brian Crompton, Ethan Kolp, Erica Schaefer, Administrator Sam Sikes, and Clerk/Treasurer Leann Monigold, (via Zoom) Councilor Brian Zimmerman and City Attorney Dean Chisholm.

Department Head Reports:

Administrator: Administrator Sikes reported, building permits for March, as of fiscal year to date, the city has sold 22 permits totaling \$12,399, covering 12 roofs, 4 new buildings, 2 major remodels, 1 carport, 1 addition, and 3 decks. 24 permits were sold for \$39,000 at this same point in fiscal year 2025, and 29 permits for over \$31,000 the year prior. The variance is attributed to elevated activity in prior years from four-plex and duplex construction projects. The building program is performing well, covering its expenses through the 75% permit revenue allocation.

Mr. Sikes reported President Trump signed the disaster recovery declaration, covering both the flood event and subsequent windstorm. The city contracted with ER Assist to serve as its representative throughout the FEMA reimbursement process. All supporting documentation, invoices, receipts, and permits, have been organized and is in order. FEMA will review eligibility of approximately \$890,000 spent to date on emergency protective measures and provide reimbursements accordingly. Montana DES will cover additional cost shares beyond the city's two-mill value threshold. A FEMA meeting is scheduled for that Friday.

Committee Reports:

Zoning: Mayor Taylor announced a meeting scheduled for Wednesday at 6:00 pm at City Hall, also available via Zoom.

Wildlife Management: Mayor Taylor reported meeting with Sam, the city's Fish and Wildlife Parks biologist, who is working to obtain up to 100 turkey permits and possibly some out-of-season deer permits. A report on CWD testing results and harvest numbers will be provided next month.

Shade Tree Board: Councilor Kolp reported the committee met the prior Saturday for pruning and moving animal protection on trees from Lincoln to Louisiana. Arbor Day is Friday, April 24, with a celebration and tree planting at Fireman's Park from 3:30 to 5:00 pm, including free seedlings and children's activities.

Public Comment Non-Agenda:

Tony Wickham expressed concern about the length of time the investigation involving Chief Ercanbrack has taken and asked council to encourage a timely resolution in the interest of public safety.

Rosemary Irish expressed concerns about the clarity of the city's water billing statements, noting the breakdown of charges is difficult to understand. Mayor Taylor encouraged her to contact Administrator Sikes and noted the annual state fee is assessed by the state and outside the city's control.

Tim Whalen, owner of Ortho Physical Therapy, expressed concern that his business has been classified in the hospital/medical clinic category for water billing purposes, resulting in higher rates that he believes do not reflect his actual water usage. Mayor Taylor asked him to contact Administrator Sikes directly for resolution.

Rocky Gifford expressed support for a timely resolution to the ongoing law enforcement investigation, highlighting Chief Ercanbrack's contributions to the community.

New Business:

Public Hearing: Wastewater System Improvements:

Mayor Taylor opened the Public Hearing at 7:14 pm.

Ian Gunalson, Engineer with WWC Engineering, presented findings from the city's Wastewater Preliminary Engineering Report (PER). WWC was contracted last fall to complete the PER. Total engineering labor cost was \$78,000; however, WWC secured two planning grants on the city's behalf, reducing the city's cash match to \$8,000. The purpose of the PER is to analyze all wastewater infrastructure city-wide, develop phased recommendations and implementation plans, and serve as the foundation required by grant agencies to secure construction funding.

WWC engineers visited the wastewater plant in January, meeting with plant operators and Administrator Sikes to document the system in its entirety, from collection pipes and lift stations to all plant components. From that assessment, four primary deficiencies were identified and analyzed for alternatives, costs, and funding scenarios. Of those four, one preferred project was selected for advancement: replacement of the city's aging vitrified clay tile sewer pipe collection system. The clay tile pipes, approximately 2,700 linear feet across six separate locations, have known issues including root intrusion, leakage potential, and bellied sections. Replacing them will improve flow consistency to the plant, improve

treatment quality, and strengthen the overall system. In addition to the six pipe segments, the project includes replacement of two deficient manholes located at Third and Louisiana and Fourth and Louisiana.

The other three deficiencies evaluated, the grit chamber, oxidation ditch mixers, and the polymer system related to the Huber screw press, were analyzed and carry comparable capital costs but cannot be phased; they were included in the PER to lay the groundwork for future funding cycles.

A decision matrix was used to evaluate 12 planning-level designs across criteria including financial feasibility, technical feasibility, operations and maintenance, public health and safety, and environmental impact. Alternative C2, traditional open-cut excavation, was selected over pipe bursting due to lower uncertainty, broader contractor availability, and the ability to phase the project across the six pipe segments, which strengthens the grant application.

The all-inclusive planning-level cost estimate for the comprehensive project, covering pipe materials, construction labor, engineering, bypass pumping, traffic control, surface restoration, and closeout, is \$1.22 million. Three grant funding sources were analyzed: the RGL, MSEP, and CDBG grants. Under Scenario 1, the best-case scenario in which all three grants are awarded and used to match each other, the city's out-of-pocket cost for the full \$1.22 million project would be just under \$35,000. WWC will prepare and submit the RGL and MSEP grant applications as part of their services; both are due mid-May 2026. The CDBG application is due in early October 2026. Grant awards are typically determined within approximately two years, placing the city in a position to know its funding picture in 2028, with design commencing around that time and construction starting in 2029 or later if a phased approach is chosen.

Councilor Kolp asked for clarification on pipe bursting. Mayor Taylor and Administrator Sikes explained that pipe bursting inserts a device through the existing pipe to fracture it outward in place rather than excavating, a method with the downside that any resulting leaks can travel along the fractured pipe fragments, making them difficult to locate.

Administrator Sikes explained the previous PER for the wastewater plant, the city received both the MSEP and RGL grants but did not receive the CDBG grant, which had dramatically reduced statewide funding that cycle with only three cities selected. Current city cash reserves are approximately \$680,000, including \$200,000 in the Capital Improvement Fund. The city is looking at needing approximately \$500,000 to address the critical failure point at the First Montana lift station, the last remaining project from the prior PER. Additionally, the wastewater plant's generator is 49 years old and in need of replacement. Given these financial constraints, the city may need to defer one grant cycle on the sewer pipe project and wait until the following year or the year after before submitting applications.

Public Comment: None

Mayor Taylor closed the Public Hearing at 7:30 pm.

EPA - Libby Asbestos Superfund site Update:

Dania Zinner, EPA Project Manager, along with Beth Archer, Community Involvement Coordinator, and Maggie Ogden, EPA Project Manager, provided an update on the Libby Asbestos Superfund Site. Five operable units have been partially deleted or delisted from the Superfund list, representing a significant milestone for Libby and Troy. The public health emergency declaration remains in place until OU3 (the former vermiculite mine) is fully remediated. The Lincoln County Asbestos Resource Program also remains in place. EPA's five-year review findings confirm that all operations are protective, and cleanup efforts are going well. The next five-year review will be in 2030.

A literature review of the past 10 years of Libby amphibole asbestos science was recently released to LASOCT and the Board of Health. The review found no basis to change the original toxicity values established in the 2014 risk assessment, and EPA's conclusion is that the remedy remains protective. Regarding Operable Unit 3, EPA is currently reviewing W.R. Grace's draft feasibility study, which will evaluate cleanup options for the former vermiculite mine. Once finalized, EPA will release a proposed plan, accept public comments, and issue a Record of Decision outlining what W.R. Grace, as the responsible party, will need to do to complete cleanup.

Beth Archer noted that 2027 is when the draft feasibility study and public comment period are expected. EPA plans to hold a public meeting and provide additional educational opportunities for the community to learn about cleanup alternatives before the comment period opens. No

Public Comment:

Rocky Gifford asked how the dam up on the mine site is holding up and inquired about an update. Ms. Zinner noted it is permitted and monitored by Montana DNRC, W.R. Grace has been actively working to improve it including a recent emergency spillway project, and ongoing work is expected to continue for approximately four more years. Council was encouraged to invite Nick Rains for a more detailed presentation on the tailings dam.

Discussion and Approval Farmers Market Request:

Mandy Bell and Isabel Manning, Farmers Market, presented a request to use public parking spaces on Mineral Avenue between Lincoln and 8th for vendor trailers and food trucks on Thursdays from 2:00 to 6:30 pm during the market season. The market is in its eighth season and second as a 501(c)3, averaging 850 visitors weekly, with approximately 150 vendors. The market is relocating to Libby Lofts this year and outlined plans to address pedestrian safety, traffic flow, and parking.

Councilor Kolp **Abstained** from voting due to conflict of interest.

Councilor Bolin **MADE A MOTION** to approve the public parking spaces for four hours per week on Thursdays, Councilor Zimmerman **SECONDED**.

Public Comment: None

Councilors Bolin, Burger, Crompton, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

Discussion and Approval – Libby Youth Baseball and Softball Association Upgrade Request (Self-Funded):

Derrek Benefield, President of Libby Youth Baseball and Softball, presented a request to make self-funded improvements to the ball fields near the cemetery. Plans include expanding the parking lot on the west side toward the Dietrich property, widening the gate at the armory entrance to allow two-way traffic, and general facility improvements. A survey has already been conducted by Barnes Anderson. Approximately \$80,000 in work was contributed by local contractors and volunteers last year. Mr. Benefield noted intent to pursue a long-term lease of approximately 20 years.

Councilor Burger inquired whether there is a current lease agreement in place. Mr. Benefield confirmed a short-term lease was made last year and that a longer-term lease is the goal going forward. Mayor Taylor explained the lease details will be worked out with the City Attorney and brought back to council separately; tonight's votes cover only the improvements.

Councilor Zimmerman commended Mr. Benefield and the association for their continued investment in the fields and expressed enthusiasm for the upcoming June tournament.

Councilor Bolin inquired about the direction of the parking lot expansion and whether the existing trails would be impacted. Mr. Benefield confirmed the expansion is planned to the west toward the Dietrich property, not toward the cemetery side, and noted the trails are part of the long-term vision for the site.

Councilor Zimmerman **MADE A MOTION** to approve the Libby Youth Baseball and Softball Association request for the upgrades. Councilor Burger **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

Approve Mayor to Authorize Future Self-Funded Upgrade Requests from Libby Youth Baseball and Softball Association:

Mayor Taylor explained rather than requiring the association to return to council each time they wish to make a small self-funded improvement, council could authorize the mayor to approve those requests directly, similar to the process used with the ski course.

Councilor Burger **MADE A MOTION** to authorize the mayor to make future self-funded upgrade requests from the Libby Youth Baseball and Softball Association, Councilor Schaefer **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

Approve Donation of 200 Yards of Gravel for Libby Youth Baseball and Softball Upgrade:

Mayor Taylor explained the association is looking to grade the west side of the parking lot where it drops off sharply toward the Dietrich property and bring in crushed gravel to fill the area. The city recently had gravel crushed and the association is requesting a donation of 200 yards.

Councilor Zimmerman inquired whether any additional gravel beyond the 200 yards, if needed to complete the project, would fall under the mayor's approval authority. Mayor Taylor confirmed it would.

Councilor Zimmerman **MADE A MOTION** to approve the 200 yards of gravel for the Libby Youth Baseball upgrade. Councilor Crompton **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

Approve all claims received to date:

Councilor Zimmerman **MADE A MOTION** to approve all claims received to date, Councilor Kolp **SECONDED**.

Public Comment: None

Councilors Bolin, Burger, Crompton, Kolp, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

Approve all business license applications received to date:

DRH Contracting, Green Diamond Mountain Forestry Management, Blue Valley Construction, Sunny Massage, and Turning Point Home Services.

Councilor Zimmerman **MADE A MOTION** to approve all business license applications received to date. Councilor Schaefer **SECONDED**.

Public Comment: None.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

General Comments from Council:

Councilor Burger raised the issue of water billing classifications, noting it is not the first time they have heard that people are being lumped into different categories. She used Ortho Physical Therapy as an example, noting they are lumped in with the hospital classification but are not using that amount of water. Asking whether there is a way, or forms available for businesses to be reclassified based on their actual water usage. Mayor Taylor recommended getting with Administrator Sikes and the Water and Sewer Committee to look at that in committee and move forward from there.

Mayor Taylor noted it has been brought to his attention by multiple people that it is campaign season. Campaign signs cannot be placed on city property or city rights-of-ways. Noting he has no control over what happens in the county, but if signs are on city property or city right-of-ways, they will be removed.

ADJOURNMENT:

Councilor Zimmerman **MADE A MOTION** to adjourn, Councilor Kolp **SECONDED**.

Councilors Bolin, Burger, Crompton, Kolp, Schaefer, Zimmerman voted **FOR**.

MOTION PASSED.

Mayor Taylor adjourned the meeting at 8:04 pm.

Mayor Hugh Taylor

Attest: _____

Clerk/Treasurer Leann Monigold

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UNAPPROVED MINUTES

The Libby City Council held regular meeting #1700 on Monday, May 4th, 2026, in the Council Chamber at City Hall.

Call To Order:

The meeting was called to order at 7:00pm by Mayor Taylor.

Present were Mayor Taylor, Councilors Brooke Bolin, Erica Schaefer, Brian Zimmerman, Administrator Sam Sikes, Deputy Clerk/Treasurer Rey Ortiz, and (via Zoom) Councilor Gail Burger, Councilor Brian Crompton, and City Attorney Dean Chisolm.

Councilor Ethan Kolp was absent.

Announcements: Mayor Taylor announced that City Administrator Sam Sikes and Deputy City Administrator Gary Beach met with Senator Tim Sheehy on May 4 to review flood damage, including an inspection of the Bear Creek bridge on Farm to Market Road that was washed out.

Department Head Reports:

City Administrator Samuel Sikes: Reported the lower reservoir is holding up well, and city got an RFQ for GEO Tech engineer to go out at the end of April. Hopefully to get people to start applying today (May 4th, 2026) with a selection being made later this month if resumes get turned in. Once the Geotech engineer is selected the city will go out for an RFP for a temporary bridge to support the drilling rig collecting core samples from the northern wall. Preparing an RFQ for Dam certified engineer to design the repair/replacement of the northern wall of the lower reservoir. The city is still looking at a 2.6 to 2.8 million dollars to return the lower reservoir to the same functioning capacity.

President Trump signed the Disaster Recovery Declarations for the December 2025 flood (DR-4901) and for the December 2025 wind event (DR-4902). The city will be receiving reimbursement for the emergency protective measures and the repair/replacement of the northern wall at the lower reservoir, so long as FEMA approves the spending.

Libby, MT DES, FEMA, and ER Assist have had two meetings thus far concerning the reimbursements, and all is going well so far. Vanessa with ER Assist has been working with FEMA to make sure all requests and documentation are properly submitted for reimbursement. Vanessa with ER Assist will be handling meetings with FEMA due to reimbursement for the city. Turning in two forms that will authorize ER Assist to put grant portal information into FEMA for the city. All proper paperwork, besides a few last-minute invoices from the DNRC and final payrolls, has been submitted for the Cat B,

Emergency Protective Measures, to ER Assist who will request reimbursement with FEMA in a few weeks for a little over \$800,000 that has been spent already. FEMA is currently satisfied. The city has spent their 2 mills on emergencies, FEMA is doing reimbursement for the works, then State will be covering the remainder of what FEMA does not.

Water PER that started 5 years ago is finished. City received \$15,000 in reimbursement from RRGL and will be closing out the MCEP planning grant for an additional \$15,000 in the next couple of weeks. With the flood disaster projects and Congressional funding requests, the city will not be going out for additional MCEP or RRGL funding this year for the water system as the top 3 projects in the PER are already on the block. Requests are being made to engineers to get their deliverables that they prep up every grant request for the city and send it to the City Administrator to keep them on file for next year.

Sewer PER is 95% finished, City engineer still trying to locate rental flow meters for the sewer mains that do not require sewer personal to do confined space entry into the manholes to get more accurate sewer flow. This will help identify where future main replacements may have to go for future growth. City will not be going out for Grants this year for the sewer because they have dedicated their funding to cover the absence of \$434,000 from the CDBG grant for the 1st and Montana Lift Station. WWC Engineering will prep out all submissions and send them to City Administrator to save for next year.

Reminder industrial waste cannot be dumped into the sewer system. It has come to the city's attention that industrial waste is being dumped into the sewer system and in part is causing problems. City currently working on removing waste, been in contact with Department of Health and City Attorney. City will have to hire someone to remove industrial waste as City's equipment and tools were not strong enough. The city is working with city attorney to get problems ceased, so it does not happen in the future. Reminder to everyone that the sewer system is not to be used for industrial or commercial waste. If anyone has questions about what is, or isn't allowed to be flushed, please stop by City Hall.

Extension received from the NRDP will be going out for bids hopefully in the next 7 to 10 days. Work possibly starts in late July to turn the spoils piles into a parking lot.

Phase II of the Spruce Street reconstruction is completed with the exception of a lengthy list of discrepancies. The city is now working with the contractor on making corrections in the upcoming weeks.

Removing trees within the city right-of-way belongs to the city and cannot be cut down by homeowners. The city has a tree board that will investigate suspected danger trees as reported. Best thing to do is stop by City Hall and ask if tree(s) belongs to the city.

City has started reworking and updating the ARC GIS system, with the help of Deputy City Administrator Gary Beech, for the water and sewer system. As part of updating, a system will be used in the city cemetery for finding specific people or plots in the future.

The city has hired a new camp host, 2 new seasonals, and a new wastewater plant operator.

The budget is about 95% prepped for the mayor and will be getting with the budget committee to hold meetings and set schedules to make sure it is passed by council on time for the State.

Streets Supervisor: Supervisor Justin Williams reported for April. Jettied sewer mains, swept streets, patched potholes, cleaned screen at lower reservoir. Cemetery construction for blocks 19 and 20 started at the beginning of the month and lowered elevation by 3 feet built a berm with all the soil, shaped embankment and will get it hydroseeded, built the roads, hauled in topsoil, and will proceed to have sprinkler system put in. Estimated cost for irrigation system \$15,400 (44 heads for two new cemetery quadrants) and \$7,866.75 for hydroseeding (46,275 sq. ft at \$0.17/sp. Ft) for a total estimate at \$23,266.75. Cemetery had one cremains and four full burials. Inspected sewer line with camera to check the health of the system. Assisted Wastewater Treatment Plant and help get it to where it needs to be. Removed a tree at the upper dam spillway, pruned trees and cleaned up debris. Sidewalk replacements, one on Dakota and two on Louisiana. Held four safety meetings: ladder safety & inspection, pedestrians, heat stress, and confined space. Old Moore Oil Field Station on 1st and Montana disconnected from water and sewer, due to business shutting down and complete building removal and site remediation. One water dig done. Three holes were made for the tree planting; two trees placed in cemetery and one in Fireman's Park where the Arbor Day ceremony was held. Placed New Wastewater Treatment Plant sign with contact information and wet well cleanout at plant. Flowerpots dropped off at Granite Peaks for hanging baskets on Mineral. Mowers are ready for seasonals, one seasonal worker returning, one new seasonal starting June 1.

Streets Crew 2026 paving and painting projects; Painting program will include crosswalks, stop bars, curb markings, parking layout, and school loading areas. The paving program will include utility cut restoration, localized pavement repairs, drainage corrections, and overlays. Painting program focus is to improve visibility, traffic control, school safety, and parking layout. Paving program focuses on restoring utility cuts and previously disturbed pavement. Projects depend on weather conditions, project schedules may be impacted by unforeseen issues that arise throughout season, unplanned maintenance needs may require immediate response and affect priorities, ongoing projects and overlapping work may also influence timing, sequencing, and crew availability.

Police: Sergeant Luthey reported for April 2026, 4 officers handled 275 cases, an increase of 59 cases from April 2025 with 216 and an increase of 25 cases from March 2026 with 250 cases. During April the police department handled 3 assaults, 7 disturbances, 3 disorderly conducts, 2 domestic disturbances, 14 domestic violence, 13 thefts, 5 mentally ill and/or suicidal subjects, 17 public assists, conducted 5 well-fair checks, 1 BLS Red 911, 9 juvenile problems, 6 walk-throughs, 14 city ordinance violations pertaining to illegally parked vehicles or disabled vehicles in roadway(s), 25 suspicious person vehicle checks, 8 collisions, 1 agency assist, 56 traffic stops, issued 12 citations for hazardous moving violations, conducted 11 arrest, code encroachment on 7 different properties.

Replaced tires on unit 2903 as it had 88,000 miles on tires and replaced right rear caliper on unit 2904.

Committee Reports:

Fire: Councilor Zimmerman reported that the Fire Department responded to 14 calls in the month of April 2026. 4 calls in the city, 4 calls in the Rural Fire District, and 6 calls outside of City or RFD. Types of calls included: 1 vehicle, 3 grassland/wildland, 1 mutual aid Libby Ambulance, 4 false alarms, 4 powerlines, 1 fuel spill/HAZMAT. Putting them at 48 total calls in the year 2026.

Lights/Streets/Sidewalks: Councilor Burger announced a meeting will be held on Friday May 15th, 2026, at 6:05pm, to continue conversation on additional parking.

Shade Tree: Mayor Taylor reported for the Shade Tree board as they were absent due to training this week. Arbor Day was a good turn out, a tree was planted at Fireman's park, and up to 75 trees were given out.

City-County Board of Health: Kristen Smith, appointed liaison to City Council and Health, reported an emergency meetings held in March, the CARD Clinic received news that the Department of Health and Human Services is disclaiming all their federal interest in CARD's assets, related to the settlement of judgement won by BNSF. Board of Health sent a letter to the Director of ATSDR (Agency for Toxic Substances and Diseases Registry) urging them to maintain the federal trust status of CARD assets. No official letter to CARD currently.

Most recent meeting April 20th, 2026: new appointee being sought from the Town of Eureka as previous member voluntarily left board. Two liaisons appointed to the Libby Asbestos Superfund Oversight Committee, currently only have one as no other board members have volunteered at this time; LASCO is reviewing a 5-year plan. Discussion of sending a letter to delegates about importance of vaccines and misinformation being spread. The Board will revisit the letter after an update on the work happening with state professionals. Beth Archer and Diana Zinner from EPA attended to talk about OU3, vermiculite mine sight, and the anticipated proposed clean-up plan by WR Grace. Brandon Holzer, with the Lincoln County Sheriff's Office, issued a plea for more regulation of Kratom. Kratom's side effects are every bit as deleterious as fentanyl. Kratom is not controlled; it is considered an herbal supplement and can be purchased at convenience stores by minors. The LCSO and public health nurse have seen an increase in instances of "overdosing" and discovered that Narcan worked to reverse it. The Board agreed to work on putting together a task force and learn from Yellowstone County. Tammy Brown is the new animal shelter manager, and the county received funding from CDBG for a Preliminary Architectural Report (PAR) for a planned new shelter. Lead sanitarian for the county was presented with the William G Walter Outstanding Sanitarian Award at the state conference. New Behavioral Coalition Coordinator is fully integrated into the department and is working with other specialists across the state to participate in a crisis data

dashboard and working with agency partners to facilitate the best path for individuals in crisis. The Board decided to increase frequency of meetings from quarterly to every other month, next meeting will be held on June 9th, 2026.

Public Comment Non-Agenda:

Justin Williams expressed his gratitude to Steve Lauer, fire chief, and Libby Volunteer Fire Department for their hard work and quick response time. During the last windstorm a powerline was knocked down and caught some of Mr. Williams' property on fire and as he arrived home, the LVFD was already present and had the fire controlled.

New Business:

Approve Igniters Car Club request for annual Street Closure & Noise Variance Request, August 14 and 15, 2026.

Mayor Taylor had council refer to letter from Igniters Car Club.

Councilor Zimmerman **MADE A MOTION** to approve Igniters Car Club request for annual Street Closure & Noise Variance Request, Councilor Schaefer **SECONDED**.

Public Comment: None.

Councilors Bolin, Schaefer, and Zimmerman voted **FOR**. Councilors Burger and Crompton, attending via Zoom, were unable to verbally respond due to technical difficulties.

MOTION PASSED.

Fire Engine Storage/display at Fireman's Park - Introduction:

Steve Lauer – Fire Chief for City of Libby and Lincoln County Rural Fire District, looking for approval or assistance reviewing a location to put a modest display building for two historic fire engines (1954 MACK and 1932 Chevy, a funeral truck for past firefighters) which is currently being housed in the main hall. The Fire department has taken over the extrication truck from Libby Volunteer Ambulance, and space is needed in the main hall for emergency response. The current concept for the building would be 30'x40', have two display bays that give protection from weather, be visible to the public, have warm interior lighting, a simple exterior that fits available funds, and be done by volunteer maintenance. The current proposed location is Fireman's Park. In terms of funding for project concrete is committed, labor will be done by firefighters themselves, and estimates believed to be \$25,000 with \$10,000 currently available through the department for this effort.

Mayor Taylor informed Mr. Lauer that he will meet with the Building Committee and Parks Committee about proposed Display.

Approve all claims received to date:

Councilor Zimmerman **MADE A MOTION** to approve all claims received to date, Councilor Bolin **SECONDED**.

Public Comment: None.

Councilors Bolin, Schaefer, and Zimmerman voted **FOR**. Councilors Burger and Crompton, attending via Zoom, were unable to verbally respond due to technical difficulties.

MOTION PASSED.

Approve all business licenses received to date:

HARMONN.

Councilor Zimmerman **MADE A MOTION** to approve business license application, Councilor Schaefer **SECONDED**.

Administrator Sikes wanted to let council members not present know, The Hidden Chapel is located within the Residential Business District and must be signed off first by Board of Adjustments prior to coming before the council.

Public Comment: None.

Councilors Bolin, Schaefer, and Zimmerman voted **FOR**. Councilors Burger and Crompton, attending via Zoom, were unable to verbally respond due to technical difficulties.

MOTION PASSED.

Unfinished Business: None.

General Comments from Council:

Councilor Schaefer, referring to the police reports, inquired why department assist was lower than previous month.

Segregant Luthey explained it has to do with manpower, at this time, Sheriff's office is averaging 2-3 deputies per shift, while the police department is averaging 1 officer.

Mayor Taylor announced Donald Wayne Engle, a World War II pilot veteran, turned 104 years old on Saturday. A large birthday party was held for him at the Care Center. Mayor Taylor proclaimed May 2, 2026, as Donald Wayne Engle Day, and the Governor proclaimed the month of May 2026 in his honor. Engle also received an award from Senator Daines and an award from Mr. Zinke.

ADJOURNMENT:

Councilor Zimmerman **MADE A MOTION** to adjourn, Councilor Schaefer **SECONDED**.

Councilors Bolin, Schaefer, and Zimmerman voted **FOR**. Councilors Burger and Crompton, attending via Zoom, were unable to verbally respond due to technical difficulties.

MOTION PASSED.

Mayor Taylor adjourned the meeting at 7:54 p.m.

Mayor Hugh Taylor

Attest: _____
Deputy Clerk/Treasurer Rey Ortiz

DRAFT

Board of Adjustments - Variance

17.04.146 -Variance.

"Variance" is a means by which an adjustment is made in the application of the specific regulations of this chapter to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same zone or vicinity and which adjustment remedies disparity in privileges. A variance is a form of special exception.

(Ord. 1359, 1987)

17.36.010 - Board of adjustment-Creation-Membership.

Pursuant to Section 76-2-321, M.C.A., the City of Libby hereby reserves to itself the power to act as the board of adjustment.

(Ord. 1359, 1987)

17.36.020 - Meetings.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall adopt its own rules of procedure and keep a record of its procedures, showing the action of the board and the vote of each member, upon each question considered, or if absent or failing to vote, indicating such fact.

(Ord. 1359, 1987)

17.36.030 - Officers.

At the first meeting each year, the board shall appoint one (1) of its members to serve as chairman and one (1) member to serve as vice chairman.

The board's office shall be that of the city hall and files of said board shall be held therein.

(Ord. 1359, 1987)

17.36.040 - Powers and duties.

The board shall set its operating rules in accordance with Section 76-2-321, M.C.A., and shall have the following powers:

A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or any amendment thereto.

B. To authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to the public interest, where owing to special conditions, the literal enforcement of the provisions of the chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.

More specifically, the board may, after public notice and hearing, approve, conditionally approve, or deny any request to grant variances from the following requirements of this chapter:

1. Setback requirements;
2. Yard requirements;
3. Area requirements;
4. Height requirements;
5. Parking requirements;
6. Fence and hedge; and
7. Sign requirements - area, location and height.

C. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirements, decisions, or determination of any administrative official, or to decide in favor of the applicant or any matter upon which it is required to pass under this chapter, or to effect any variation of this chapter.
(Ord. 1359, 1987)

17.36.050 - Procedure.

Written applications for appeals or variances shall be filed in the office of the building inspector. Notwithstanding any other provisions of this chapter, a filing fee shall be paid to the city upon filing of each application for the purpose of defraying expenses incidental to proceedings. No application will be regarded as having been filed until such fee has been paid. The amount of the filing fee shall be set by resolution of the city council.

The board of adjustment shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and purpose of this chapter. Such investigation shall include inquiry to and invitation to comment from the City of Libby Planning Board. During time of appeal all construction shall cease and shall not commence until approved by the board of adjustment.

(Ord. 1594 § 119, 2002; Ord. 1359, 1987)

17.36.060 - Hearing and notice.

There shall be a hearing for each application of appeal or variance. Said hearing shall be held at an appointed time and place. Testimony shall be taken by the board of adjustment from persons interested in said application.

Notice of hearing shall be published once in a newspaper of general circulation within the city at least fifteen (15) days prior to the hearing date.

(Ord. 1359, 1987)

17.36.070 - Approval.

Before any variance can be granted, the board of adjustment shall make findings of fact setting forth and showing that the following circumstances exist:

A. In considering all proposed variances to this chapter, the board shall, before making any findings in a specified case, first determine that the proposed variance will not amount to a rezone and constitute a change in the district boundaries shown on the official zoning map.

B. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this chapter.

C. That the special conditions and circumstances do not result from the actions of the applicant.

D. That granting the variance requested will not confer a special privilege to subject property that is denied other lands in the same district.

E. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.

F. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land.

G. The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

H. The fact that property may be utilized more profitably will not be an element of consideration before the board of adjustment.
(Ord. 1359, 1987)

17.36.080 - Conditions of approval.

In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that will ensure that the purpose and intent of this chapter shall not be violated. Violation of such conditions and safeguards when made part of the terms under which the variance is granted shall be deemed a violation of this chapter and punishable under [Section 17.38.130](#), Penalties.
(Ord. 1359, 1987)

17.36.090 - Definition of public interest.

With respect to uses of lands, buildings and other structures, this chapter is declared to be a definition of the public interest by the city council, and the spirit of this chapter will not be observed by any variance which permits a use not generally permitted in the district involved, or any use expressly or by implication prohibited by terms of this chapter in said district. Therefore, under no circumstances shall the board of adjustment grant a variance to permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.
(Ord. 1359, 1987)

17.36.100 - Appeals from the board of adjustment.

Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the city council a verified petition setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the city council within thirty (30) days after the filing of the decision in the office of the board of adjustment.
(Ord. 1359, 1987)

17.36.110 - Time decision effective.

The decision of the board of adjustment shall be final except as provided in [Section 17.36.100](#) and if a building permit or land use permit is not obtained for the subject property within six (6) months from the date of the board's decision, the variance shall be automatically cancelled and become null and void.
(Ord. 1359, 1987)



City of Libby
Libby Montana
www.cityoflibby.com

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952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
Fax (406) 293-4090

NOTICE OF HEARING

BOARD OF ADJUSTMENTS

MAY 18, 2026 @ DURING THE 7:00PM COUNCIL MEETING
COUNCIL CHAMBERS – CITY HALL

CALL TO ORDER:

- Welcome

NEW BUSINESS: Each new agenda item will be introduced by the Mayor (or assigned liaison) with a description of the item and explanation for the recommended action. Following council discussion on each item will be an opportunity for public comment prior to any action taken. **Public comment is limited to 3 minutes concerning the agenda item being discussed only.**

The Libby Board of Adjustments will hold a hearing to receive comments on approving/denying an eight foot tall fence at 1208 Nevada Ave.

GENERAL COMMENTS FROM COUNCIL:

ADJOURNMENT:

Notes:

The manner of Addressing Council:

- Each person, not a Council member shall address the Council, at the time designated in the agenda or as directed by the Council, by stepping to the podium or microphone, giving that person's name and address in an audible tone of voice for the record, unless further time is granted by the Council, **shall limit the address to the Council to three minutes.**
- All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff with no personal remarks allowed.
- No person, other than the Council and the person having the floor, shall be permitted to enter any discussion either directly or through a member of the Council, without the permission of the Presiding Officer.
- Any person making personal, impertinent, or slanderous remarks or who shall become boisterous or disruptive during the council meeting shall be forthwith barred from further presentation to the council by the presiding officer unless permission to continue by granted by a majority vote of the council.

ATTENTION:

To access this meeting electronically with ZOOM,
Dial: 253-215-8782
Meeting ID: 4042719951
Password: 151041

Posted: 04/24/26

Public Notice

The City of Libby Board of Adjustments will be holding a hearing on Monday, May 18th, 2026, in the Council Chambers of City Hall during the 7:00 pm council meeting to consider a fence height variance application at 1208 Nevada Ave. The Board will hear comments from any concerned parties.

For further information on the actions to be taken or to submit comments, contact the City Administrator at 293-1278, city.admin@cityoflibby.com, or stop by City Hall at 952 E. Spruce St.

Publish on 22 April 2026



City of Libby Libby Montana

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To: Libby Board of Adjustments

10 Apr 2026

From: Samuel Sikes, City Administrator

Subject: PARKER VARIANCE CONCLUSIONS

I have reviewed the Parker variance request and made the following conclusions.

The Parkers reside at 1208 Nevada Ave. on .174 acres and is requesting variance to build a 70' long by 8' tall privacy fence on the southern property line to create a sight and sound barrier.

The property is within the Residence A District. City code 17.32.030(A), under miscellaneous provisions, states that fences or walls may not exceed six feet in any residential district and the city building code requires a permit for any fence that is over 6' tall. The International Building Code that the city adopted, IBC Code 105.2, is in line with the city ordinances not requiring a permit for fences under 6' in height. The Parkers variance request would waive the 6' height limitation and allow an 8' tall privacy fence for roughly 70' just off the joint property line to the south of the property allowing for mowing and maintenance of the fence once constructed.

The fence, as requested, would require a building permit from the city which will ensure that setbacks and proper building techniques are utilized.

A handwritten signature in blue ink, appearing to read "S. Sikes", is written over the printed name of Samuel Sikes.

Samuel Sikes
City Administrator



17.32.030 - Fence or wall.

A. Fences or walls may not exceed six feet in height in any residential district.

B. For corner lots, see visibility triangle (Section 12.40.060).

(Ord. 1359, 1987)

(Ord. No. 2007, 6-5-2023)

BUILDING PERMIT REQUIREMENTS

What is a Building Permit?

A building permit gives you the legal permission to start the construction of a building project in the city limits.

Permits are needed to monitor construction work within the city limits to assure acceptable levels of safety, convenience, health and fire requirements, and quality standards meet the adopted International Building and International Residential Code.

In addition to a city building permit, you may also need a State issued electrical, plumbing, or mechanical permit. These permit applications are available from any licensed contractor specializing in the area.

When is a Building Permit required or not?

Any property owner or contractor who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to cause any such work to be performed, shall first make application to the building inspector, and obtain the required building permit.

Building permits are not required for the following:

1. One-story detached accessory structures used as tool and storage sheds, playhouses, and similar uses, provided that the floor area is not greater than 120 square feet.
2. Fences not over 6 feet (2134 mm) high.
3. Retaining walls that are not over 4 feet in height measured from the bottom of the footing to the top of the wall.
4. Sidewalks and driveways not more than 30 inches above adjacent grade, and not over any basement below and are not part of an accessible route. A Sidewalk Permit is required for reimbursement within the city easement.
5. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
6. Prefabricated swimming pools that are less than 24 inches deep, are not greater than 5,000 gallons and are installed entirely above ground.
7. Shade cloth structures constructed for nursery or agricultural purposes, not including service systems.
8. Swings and other playground equipment accessory to detached one- and two-family dwellings.
9. Window awnings supported by an exterior wall that do not project more than 54 inches and do not require additional support.

Although permits are not required for the above projects, city code must still be followed. Please contact the building inspector or city administrator for more information.

International Building Code 105.2

Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:
Building:

1. One-story detached accessory structures used as tool and storage sheds, playhouses and similar uses, provided the floor area does not exceed 120 square feet (11 m²).
2. Fences not over 6 feet (1829 mm) high.
3. Oil derricks.
4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
5. Water tanks supported directly on grade if the capacity does not exceed 5,000 gallons (18 925 L) and the ratio of height to diameter or width does not exceed 2:1.
6. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or story below and are not part of an accessible route.
7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
8. Temporary motion picture, television and theater stage sets and scenery.

VARIANCE REQUEST - FENCE HEIGHT

March 30, 2026

Mayor Hugh Taylor and Members of the City Council

City of Libby, Montana

952 E. Spruce Street, P.O. Box 1428

Libby, MT 59923

Re: Variance Request, Fence Height Exceeding Standard Maximum

Dear Mayor Taylor and Members of the City Council,

My name is Steve Parker and I reside at 1208 Nevada Avenue, Libby, MT 59923, with my wife Halley Parker. We are respectfully submitting this formal request for a variance to install a privacy fence exceeding the standard height limit along the south side of our property, which borders the property at 1210 Nevada Avenue (Geocode: 56-4175-04-4-07-04-0000), owned by Keylie May Vulgamore.

Background and Nature of the Issue

Since the current residents moved into 1210 Nevada Avenue, our quality of life has been significantly and continuously impacted by a persistent pattern of disturbances originating from that property. These issues have gone on for several years and include constant and excessive dog barking, loud music at unreasonable hours, motorcycle and four-wheeler noise, and ongoing disruptive behavior from residents and their guests. We have made every reasonable effort to address these concerns, but the problems have continued without meaningful resolution.

We wish to note that this situation has previously been brought before the Montana Nineteenth Judicial District Court, Lincoln County (Cause No. DR-25-150). In its ruling, the Court acknowledged that the circumstances at 1210 Nevada Avenue are "extremely disruptive to the entire neighborhood," and described the respondent as "rash, vulgar, and immature." The Court further noted that law enforcement and child protective services have been called to that property numerous times. While the Court's ruling was limited to the specific legal threshold for an Order of Protection, the judicial record stands as independent confirmation of the ongoing and serious nature of the situation we have endured. We are prepared to provide these court documents to the Board upon request.

Beyond the noise, we have a serious and well-documented privacy concern. The resident at 1210 Nevada Avenue, [REDACTED], was recorded on video in his own driveway stating three things clearly: that his security camera points directly at our bedroom window, that a 6-foot fence would be a waste of money and would not give us any privacy, and that he himself stands 6 feet tall, from which we can only presume he means he would be able to see directly over a 6-foot fence. These are not our words or our interpretation, they are his own statements, caught on camera. It could not be any clearer that a standard-height fence will do nothing to protect our privacy.

Our Variance Request

We are requesting a variance to install an 8-foot privacy fence along the south side of our property at 1208 Nevada Avenue. From our understanding, the City of Libby currently allows up to a 7 foot tall fence on side yards and a 6 foot tall fence in front yards. We are not proposing any fence along the front of our property, this request is limited solely to approximately 70 linear feet along the south side boundary, running between our home and the neighboring property at 1210 Nevada Avenue. We are respectfully asking the Council to grant an exception of one additional foot above the permitted side yard maximum.

We also wish to note that we plan to set the fence back approximately two feet inside our property line rather than placing it directly on the boundary. This will allow us to access and maintain both sides of the fence without ever needing to enter the neighboring property. Our property corners and a midpoint along the road have already been marked as part of our survey work, ensuring the fence will be placed accurately and in full compliance with boundary requirements.

The fence will run approximately 70 linear feet along the south property boundary. We are planning to construct a double-wall fence with soundproofing material on the interior to maximize noise reduction. This is a significant financial investment for our family and we want to ensure we get the most out of it. We have had the property surveyed to confirm exact boundary lines and are ready to move forward as soon as a variance is approved.

Why the Standard Height Is Insufficient

This request is not about preference or aesthetics, it is about necessity. The neighbor himself stated on camera that a 6-foot fence would be a waste of money and would not give us any privacy, that his security camera points directly at our bedroom window, and that he stands 6 feet tall, leading us to presume that he means he would be able to see directly over a standard fence. Eight feet is the minimum height we believe will give us the privacy and noise reduction that every family deserves in their own home.

It is disheartening that we find ourselves needing to make this kind of investment just to feel comfortable on our own property. We love our home, we love our neighborhood, and we are deeply rooted in this community. But the situation has become serious enough that we have genuinely begun exploring other places to live, something we never wanted to consider. This fence is our sincere attempt to make staying in Libby possible, and we are committed to doing whatever it takes to make that happen.

Supporting Documentation

We have the following documentation available to present to the Council at the April 7, 2026 meeting:

- Recording of [REDACTED] stating his camera points at our (bedroom) window, that a 6-foot fence would be a waste of money and provide no privacy, and that he stands 6 feet tall
- Court records from Montana Nineteenth Judicial District Court, Lincoln County (Cause No. DR-25-150), in which the Court itself described the situation at 1210 Nevada Avenue as "extremely disruptive to the entire neighborhood"
- Photographs of the property and south boundary line

We appreciate the Council's time and consideration of this request. We believe this variance is a fair, reasonable, and necessary solution that will allow us to protect our privacy, restore our quality of life, and remain proud members of this community. We look forward to presenting our case at the April 7th meeting and welcome any questions.

Respectfully submitted,

Steve & Halley Parker

1208 Nevada Avenue

Libby, MT 59923



CITY OF LIBBY

952 E. SPRUCE | POST OFFICE BOX 1428

PHONE 406-293-2731 | FAX 406-293-4090 | WEBSITE: www.cityoflibby.com

Application for Variance
City of Libby Board of Adjustment

Applicant:

Name: Steve Parker

Address: 1208 NEVADA AVE Libby, MT 59923

Phone: [REDACTED] Email: [REDACTED]

Property:

Owner Name: Steve Parker

Address: 1208 NEVADA AVE Libby, MT 59923

Phone: [REDACTED] Email: [REDACTED]

Legal Description: (lot#, block# subdivision) Lots 4, 5 and S2 Lot 6, Block 13 Frary + Olson Addition

Corner lot? Yes No Current Zoning District: Residential A

Variance related to:

Setback Building/Fence Height Lot Coverage Percentage Business Other

Summarize variance request:

Request to install an 8-foot Privacy fence along the South side Property boundary at 1208 Nevada Ave. - Approximately 70 linear feet between our home and 1210 Nevada Avenue. No front yard fence is proposed. From our understanding, the city of Libby currently allows up to 7 feet on side yards and 6 feet in front yards. We are requesting one additional foot above the side yard maximum. The fence will set back approx. 2 feet inside our property line for maintenance access on both sides, and property corners and mid-point have already been marked by survey.

Please answer and explain each of the following questions.

1. Will your variance amount to a rezoning of the property or change the district?
No. This variance request is limited solely to fence height along the south side boundary of our residential property. It does not involve any change to the zoning district or intended use of the land.

2. What special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district?

The south boundary of our property at 1208 Nevada Ave directly borders 1210 Nevada Ave, where years of ongoing disturbances have significantly impacted our quality of life. This situation was previously brought the Montana Nineteenth Judicial District Court Lincoln County (Case No. DR-25-150). The court itself described the circumstances at 1210 Nevada Avenue as "extremely disruptive to the entire neighborhood" and characterized the respondent as "rash, vulgar, and immature with law enforcement and CPS called to that property numerous times. These court records are available."

(continued on back)

and will be presented at the hearing. The resident at 1210 Nevada Ave, [REDACTED], was recorded on video in his own driveway stating that his security camera points directly at our bedroom window, that a 6 ft fence would be a waste of money and would not give us any privacy, and that he himself stands 6 feet tall, from which we can only presume he means he would be able to see directly over a standard fence. These are not our words or our interpretation, they are his own statements, caught on camera. These are circumstances specific to our property's location and its relationship to the neighboring property that are not common to other properties in the same district.

3. Did the special conditions and circumstances result from the actions of the applicant?

No. The Conditions and Circumstances Prompting this Request Originate Entirely From the Neighboring Property at 1210 Nevada Ave. and are in no way the result of any Action taken by the Applicant.

4. Will granting the variance requested confer a special privilege to subject property that is denied other lands in the same district?

No. This variance is being requested in response to a unique and documented set of circumstances specific to our property and its relationship to the neighboring property, including court-confirmed ongoing disturbances and a documented on-camera admission by the neighboring resident that a standard height fence would be ineffective. Any property owner in the same district facing the same documented situation would have equal standing to make this request. This is not a matter of preference, it is a necessary response to an ongoing and documented situation.

5. Will the granting of the variance be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated?

No. The Proposed 8-foot fence will be constructed along the South Side boundary of our Private residential property, set back approx. 2 feet inside our property line. It will not obstruct public right of way, impact traffic, visibility or negatively affect surrounding properties.

6. Will this variance be the minimum variance that will make possible the reasonable use of the land?

Yes. From our understanding the City of Libby currently permits up to 7 feet on side yards. We are requesting only 1 additional foot above that permitted maximum. Eight feet is the absolute minimum we believe will provide the privacy and noise reduction necessary for the reasonable and peaceful use of our property.

7. Will the granting of the variance be in harmony with the general purpose and intent of Chapter 17, and/or will it be injurious to the neighborhood, or otherwise detrimental to the public welfare?

Yes, it will be in harmony. The purpose of zoning regulations is to protect the health, safety, and well being of the residents. Granting this variance directly supports that purpose by allowing us to protect our privacy and reduce ongoing noise disturbances that have been court confirmed and extremely disruptive to the entire neighborhood.


Note: The fact that property may be utilized more profitably will not be an element of consideration before the board of adjustment.

Explain the extent of the circumstances that are creating hardship or difficulty in compliance with the City of Libby Zoning Code and list alternatives, and/or options considered by the applicant. Please provide supporting documentation:

Please see Harassment/Alternatives considered Section in the printed version of this application that has been provided with this application.

Provide any additional information you would like the Board to consider:

Please see Additional Information for the Board Section in the Printed Version
of this Application that has been provided with this Application.

Applicant signature:  Date submitted: 04-02-2026

Board of Adjustments action: Approved Disapproved Date action taken: _____

Board notes:

CITY OF LIBBY

952 E. Spruce | Post Office Box 1428
Phone 406-293-2731 | Fax 406-293-4090 | Website: www.cityoflibby.com

Application for Variance City of Libby Board of Adjustment

Applicant Information

Name: Steve Parker

Address: 1208 Nevada Avenue, Libby, MT 59923

Phone: 406-717-8276

Email: [REDACTED]

Property Information

Owner Name: Steve Parker

Address: 1208 Nevada Avenue, Libby, MT 59923

Phone: [REDACTED]

Email: [REDACTED]

Legal Description: Lots 4, 5, and S2 Lot 6, Block 13, Frary & Olson Addition

Corner Lot: No

Current Zoning District: Residential A

Variance Request

Variance related to: Building/Fence Height ✓

Summary of Variance Request:

Request to install an 8-foot privacy fence along the south side property boundary at 1208 Nevada Avenue — approximately 70 linear feet between our home and 1210 Nevada Avenue. No front yard fence is proposed. From our understanding, the City of Libby currently allows up to 7 feet on side yards and 6 feet in front yards. We are requesting one additional foot above the side yard maximum. The fence will be set back approximately 2 feet inside our property line for maintenance access on both sides, and property corners and a midpoint have already been marked by survey.

Required Questions

1. Will your variance amount to a rezoning of the property or change the district?

No. This variance request is limited solely to fence height along the south side boundary of our residential property. It does not involve any change to the zoning district or intended use of the land.

2. What special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district?

The south boundary of our property at 1208 Nevada Avenue directly borders 1210 Nevada Avenue, where years of ongoing disturbances have significantly impacted our quality of life. This situation was previously brought before the Montana Nineteenth Judicial District Court, Lincoln County (Cause No. DR-25-150). The Court itself described the circumstances at 1210 Nevada Avenue as "extremely disruptive to the entire neighborhood" and characterized the respondent as "rash, vulgar, and immature," with law enforcement and child protective services called to that property numerous times. These court records are available and will be presented at the hearing. The resident at 1210 Nevada Avenue, Noah, was recorded on video in his own driveway stating that his security

camera points directly at our bedroom window, that a 6-foot fence would be a waste of money and would not give us any privacy, and that he himself stands 6 feet tall, from which we can only presume he means he would be able to see directly over a standard fence. These are not our words or our interpretation, they are his own statements, caught on camera. These are circumstances specific to our property's location and its relationship to the neighboring property that are not common to other properties in the same district.

3. Did the special conditions and circumstances result from the actions of the applicant?

No. The conditions and circumstances prompting this request originate entirely from the neighboring property at 1210 Nevada Avenue and are in no way the result of any action taken by the applicant. We have made every reasonable effort to address these concerns but have been left with no adequate remedy other than the installation of a taller privacy fence.

4. Will granting the variance requested confer a special privilege to subject property that is denied other lands in the same district?

No. This variance is being requested in response to a unique and documented set of circumstances specific to our property and its relationship to the neighboring property, including court-confirmed ongoing disturbances and a documented on-camera admission by the neighboring resident that a standard-height fence would be ineffective. Any property owner in the same district facing the same documented situation would have equal standing to make this request. This is not a matter of preference, it is a necessary response to an ongoing and documented situation.

5. Will the granting of the variance be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated?

No. The proposed 8-foot fence will be constructed along the south side boundary of our private residential property, set back approximately 2 feet inside our property line. It will not obstruct public right-of-way, impact traffic visibility, or negatively affect surrounding properties. No front yard fence is proposed. In fact, the fence will likely benefit the neighborhood by reducing noise and improving the overall appearance of the property boundary.

6. Will this variance be the minimum variance that will make possible the reasonable use of the land?

Yes. From our understanding, the City of Libby currently permits up to 7 feet on side yards. We are requesting only one additional foot above that permitted maximum. The neighbor himself stated on camera that a 6-foot fence would be a waste of money and would not provide privacy, and that he stands 6 feet tall, leading us to presume he can see over a standard fence. Eight feet is the absolute minimum we believe will provide the privacy and noise reduction necessary for the reasonable and peaceful use of our property. Additionally, we are setting the fence approximately 2 feet inside our property line rather than on the boundary, further demonstrating that this request is the minimum necessary and is being approached responsibly.

7. Will the granting of the variance be in harmony with the general purpose and intent of Chapter 17, and/or will it be injurious to the neighborhood, or otherwise detrimental to the public welfare?

Yes, it will be in harmony. The purpose of zoning regulations is to protect the health, safety, and welfare of residents. Granting this variance directly supports that purpose by allowing us to protect our privacy and reduce ongoing noise disturbances that have been court-confirmed as extremely disruptive to the entire neighborhood. The fence will be constructed on our private property, set back from the boundary, and is consistent with the residential character of the area.

Hardship / Alternatives Considered

We have endured years of ongoing noise disturbances from the neighboring property including constant dog barking, loud music, motorcycle and four-wheeler noise, and disruptive behavior. This situation was brought before the District Court, which confirmed the circumstances as "extremely disruptive to the entire neighborhood." We have explored all reasonable alternatives prior to this request. The resident at 1210 Nevada Avenue, [REDACTED] was recorded on video in his own driveway stating that his security camera points directly at our bedroom window, that a 6-foot fence would be a waste of money and would not give us any privacy, and that he himself stands 6 feet tall, from which we can only presume he means he would be able to see directly over a standard fence. These are not our words or our interpretation, they are his own statements, caught on camera. A standard height fence is therefore not a viable solution. We are proposing a double-wall fence with interior soundproofing to maximize the effectiveness of this investment, set back approximately 2 feet inside our property line, and are requesting only the minimum additional height necessary to make it functional.

Additional Information for the Board

Video documentation is available in which the neighboring resident, [REDACTED] states on camera that his security camera points directly at our bedroom window, that a 6-foot fence would be a waste of money and would not give us any privacy, and that he himself stands 6 feet tall, from which we can only presume he means he would be able to see directly over a standard fence. Court records from Cause No. DR-25-150 are also available, in which the Court described the situation at 1210 Nevada Avenue as "extremely disruptive to the entire neighborhood." All documentation will be presented to the Board at the April 7, 2026 meeting.

Applicant Signature: _____ **Date Submitted:** March 30, 2026

Board of Adjustments action: Approved ___ Disapproved ___ **Date action Taken:** _____

Board Notes:

Hon. MATTHEW J. CUFFE

District Judge

512 California Avenue

Libby, MT 59923

**MONTANA NINETEENTH JUDICIAL DISTRICT COURT
LINCOLN COUNTY**

HALLEY PARKER,

Petitioner

vs.



Respondent.

Cause No. DC-25-150

**ORDER GRANTING TEMPORARY
ORDER OF PROTECTION and ORDER
FOR PERSONAL SERVICE**

This matter came before the Court on a Petition for an Ex Parte Temporary Order of Protection. The request is the Order be granted “ex parte” meaning, without giving the other person an opportunity to respond.

Under Montana law:

A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.

MCA § 40-15-201(1). In this instance the allegations are both verbal altercations and written threats. The written “threats” were not provided to the Court. The Petition alleges escalating conflict that has resulted in third parties contacting law enforcement to intervene, and threats to pets. The attachments to the Petition describe a history between the parties.

Based on the information (limited as it may be) contained in the Petition, the Court finds the good cause to grant the Temporary Order of Protection under the terms and conditions in the Order filed contemporaneously with this Order.

The Court is setting a hearing as required by statute. To obtain a permanent Order of Protection, Petitioner must establish she is a victim of assault, aggravated assault, assault on a

minor, stalking, incest, sexual assault, sexual intercourse, sexual abuse of children, or human trafficking. MCA § 40-15-102(2)(a). At this hearing each party is required to provide witness testimony and exhibits related to the allegations contained in the Petition. To be clear, hearsay statements in the form of letters or even affidavits will not be considered.

The Clerk of Court is directed to include this Order with the Temporary Order of Protection to be personally served on Respondent.

ELECTRONICALLY SIGNED AND DATED BELOW

Hon. MATTHEW J. CUFFE
District Judge
512 California Avenue
Libby, MT 59923

**MONTANA NINETEENTH JUDICIAL DISTRICT COURT
LINCOLN COUNTY**

HALLEY PARKER,

Petitioner

vs.



Respondent.

Cause No. DR-25-150

**ORDER DENYING PERMANENT
ORDER OF PROTECTION**

This matter came before the Court on a Petition for an Ex Parte Temporary Order of Protection. The Court granted a Temporary Order of Protection and set the matter for hearing. A hearing was held. Both parties appeared *pro se*, called witnesses and admitted exhibits. Having heard the testimony and reviewed the evidence, and good cause appearing, for the reasons stated below, the Court finds as follows:

ORDER

IT IS HEREBY ORDERED that the Petition for a Permanent Order of Protection is **DENIED** and the Temporary Order of Protection is **DISMISSED**.

RATIONALE

Under Montana law a person can obtain an Order of Protection against a third party (as opposed to a spouse or other family member) if it is established, he or she is a victim of assault, aggravated assault, assault on a minor, stalking, incest, sexual assault, sexual intercourse without consent, sexual abuse of children, or human trafficking. MCA § 40-15-102(2)(a).

This case is a situation wherein many in this neighborhood have longstanding and very legitimate concerns regarding Respondent's parenting. There have been reports, and Respondent admits, he struggles with containing his twin children. This has resulted in documented instances of the children in neighbors' driveways and the children climbing out on the roof of Respondent's house. To be clear, these children are barely toddlers. Moreover, Respondent has

numerous people, adults and children, living on the premises, some in a shed in the back yard, and his dog has been the subject of complaints to animal control. Law enforcement and child protection services have been called to Respondent's house numerous times. Respondent and his wife have both filed for Orders of Protection against each other and at times have lived in utter chaos. All of this is extremely disruptive to the entire neighborhood. Moreover, these neighborhood issues have been the subject of Facebook posts, and the parties have all argued over electronic messages.

On the day in question, one of the neighbors, not Petitioner, once again called animal control. Respondent then confronted Petitioner about some bushes on the property line. There were also electronic messages about Petitioner's cats. Petitioner believes Respondent thought she called law enforcement and was retaliating against her. Respondent admits there was a discussion about bushes and the cat, he disputes the nature of the contact or that it was retaliatory in nature. Respondent did admit that he then had a verbal altercation with another neighbor that devolved into hurling obscenities and threats. That neighbor did not request an Order of Protection.

The Court has reviewed the text messages, the photos and heard the testimony. The Court certainly agrees that this situation is not ideal. Respondent does not demonstrate model parenting, and he is rash, vulgar, and immature. However, the record presented does not rise to the level of warranting an Order of Protection.

The Court notes that any escalation in conduct, including threats or harm to person or property, will be grounds for Petitioner to re-file her Petition.

ELECTRONICALLY SIGNED AND DATED BELOW

Chapter 17.36 - BOARD OF ADJUSTMENT AND APPEALS

Sections:

17.36.010 - Board of adjustment—Creation—Membership.

The board of adjustment is hereby established to act on appeal and variance applications as herein detailed. Said board [shall] consist of five members appointed by the mayor for three year terms (with staggering terms) and subject to confirmation by the city council.

Pursuant to Section 76-2-321, M.C.A., the City of Libby hereby reserves to itself the power to act as the board of adjustment.

(Ord. 1359, 1987)

(Ord. No. 1888, 12-19-2016)

17.36.020 - Meetings.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall adopt its own rules of procedure and keep a record of its procedures, showing the action of the board and the vote of each member, upon each question considered, or if absent or failing to vote, indicating such fact.

(Ord. 1359, 1987)

17.36.030 - Officers.

At the first meeting each year, the board shall appoint one (1) of its members to serve as chairman and one (1) member to serve as vice chairman.

The board's office shall be that of the city hall and files of said board shall be held therein.

(Ord. 1359, 1987)

17.36.040 - Powers and duties.

The board shall set its operating rules in accordance with Section 76-2-321, M.C.A., and shall have the following powers:

A.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or any amendment thereto.

- B. To authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to the public interest, where owing to special conditions, the literal enforcement of the provisions of the chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.

More specifically, the board may, after public notice and hearing, approve, conditionally approve, or deny any request to grant variances from the following requirements of this chapter:

1. Setback requirements;
 2. Yard requirements;
 3. Area requirements;
 4. Height requirements;
 5. Parking requirements;
 6. Fence and hedge; and
 7. Sign requirements - area, location and height.
- C. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirements, decisions, or determination of any administrative official, or to decide in favor of the applicant or any matter upon which it is required to pass under this chapter, or to effect any variation of this chapter.

(Ord. 1359, 1987)

17.36.050 - Procedure.

Written applications for appeals or variances shall be filed in the office of the building inspector. Notwithstanding any other provisions of this chapter, a filing fee shall be paid to the city upon filing of each application for the purpose of defraying expenses incidental to proceedings. No application will be regarded as having been filed until such fee has been paid. The amount of the filing fee shall be set by resolution of the city council.

The board of adjustment shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and purpose of this chapter. Such investigation shall include inquiry to and invitation to comment from the City of Libby Planning Board. During time of appeal all construction shall cease and shall not commence until approved by the board of adjustment.

(Ord. 1594 § 119, 2002; Ord. 1359, 1987)

(Ord. No. 1888, 12-19-2016)

17.36.060 - Hearing and notice.

There shall be a hearing for each application of appeal or variance. Said hearing shall be held at an appointed time and place. Testimony shall be taken by the board of adjustment from persons interested in said application.

Notice of hearing shall be published once in a newspaper of general circulation within the city at least fifteen (15) days prior to the hearing date.

(Ord. 1359, 1987)

17.36.070 - Approval.

Before any variance can be granted, the board of adjustment shall make findings of fact setting forth and showing that the following circumstances exist:

- A. In considering all proposed variances to this chapter, the board shall, before making any findings in a specified case, first determine that the proposed variance will not amount to a rezone and constitute a change in the district boundaries shown on the official zoning map.
- B. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this chapter.
- C. That the special conditions and circumstances do not result from the actions of the applicant.
- D. That granting the variance requested will not confer a special privilege to subject property that is denied other lands in the same district.
- E. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.
- F. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land.
- G. The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- H.

The fact that property may be utilized more profitably will not be an element of consideration before the board of adjustment.

(Ord. 1359, 1987)

17.36.080 - Conditions of approval.

In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that will ensure that the purpose and intent of this chapter shall not be violated. Violation of such conditions and safeguards when made part of the terms under which the variance is granted shall be deemed a violation of this chapter and punishable under Section 17.38.130, Penalties.

(Ord. 1359, 1987)

17.36.090 - Definition of public interest.

With respect to uses of lands, buildings and other structures, this chapter is declared to be a definition of the public interest by the city council, and the spirit of this chapter will not be observed by any variance which permits a use not generally permitted in the district involved, or any use expressly or by implication prohibited by terms of this chapter in said district. Therefore, under no circumstances shall the board of adjustment grant a variance to permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

(Ord. 1359, 1987)

17.36.100 - Appeals from the board of adjustment.

Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the city council a verified petition setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the city council within thirty (30) days after the filing of the decision in the office of the board of adjustment.

(Ord. 1359, 1987)

17.36.110 - Time decision effective.

The decision of the board of adjustment shall be final except as provided in Section 17.36.100 and if a building permit or land use permit is not obtained for the subject property within six (6) months from the date of the board's decision, the variance shall be automatically cancelled and become null and void.

(Ord. 1359, 1987)



City of Libby
Libby Montana
www.cityoflibby.com

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952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
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NOTICE OF HEARING

BOARD OF ADJUSTMENTS

MAY 18, 2026 @ DURING THE 7:00PM COUNCIL MEETING
COUNCIL CHAMBERS – CITY HALL

CALL TO ORDER:

- Welcome

NEW BUSINESS: Each new agenda item will be introduced by the Mayor (or assigned liaison) with a description of the item and explanation for the recommended action. Following council discussion on each item will be an opportunity for public comment prior to any action taken. **Public comment is limited to 3 minutes concerning the agenda item being discussed only.**

The Libby Board of Adjustments will hold a hearing to receive comments on approving/denying a lot size adjustment on the vacant property at 5th St. and Utah Ave. from 5000 sf to 4762 sf to build two habitat homes.

GENERAL COMMENTS FROM COUNCIL:

ADJOURNMENT:

Notes:

The manner of Addressing Council:

- Each person, not a Council member shall address the Council, at the time designated in the agenda or as directed by the Council, by stepping to the podium or microphone, giving that person's name and address in an audible tone of voice for the record, unless further time is granted by the Council, **shall limit the address to the Council to three minutes.**
- All remarks shall be addressed to the Council as a body and not to any member of the Council or Staff with no personal remarks allowed.
- No person, other than the Council and the person having the floor, shall be permitted to enter any discussion either directly or through a member of the Council, without the permission of the Presiding Officer.
- Any person making personal, impertinent, or slanderous remarks or who shall become boisterous or disruptive during the council meeting shall be forthwith barred from further presentation to the council by the presiding officer unless permission to continue by granted by a majority vote of the council.

ATTENTION:

To access this meeting electronically with ZOOM,

Dial: 253-215-8782

Meeting ID: 4042719951

Password: 151041

Posted: 04/22/26

Public Notice

The City of Libby Board of Adjustments will be holding a hearing on Monday, May 18th, 2026, in the Council Chambers of City Hall during the 7:00 pm council meeting to consider a lot size variance application for vacant property located at 5th and Utah. The Board will hear comments from any concerned parties.

For further information on the actions to be taken or to submit comments, contact the City Administrator at 293-1278, city.admin@cityoflibby.com, or stop by City Hall at 952 E. Spruce St.

Publish on 22 April 2026



City of Libby Libby Montana

www.cityoflibby.com

PO Box 1428
952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
Fax (406) 293-4090

To: Libby Board of Adjustments

9 Apr 2026

From: Samuel Sikes, City Administrator

Subject: KVP VARIANCE CONCLUSIONS

I have reviewed the Kootenai Valley Partners (KVP) variance request and made the following conclusions.

KVP currently owns three vacant 3,175 sf lots located at the intersection of 5th St. and Utah Ave. and is requesting variance to complete a property line adjustment to create two 4,762 sf lots for construction of two separate habitat homes. KVP has applied for a variance to reduce the minimum lot size for each newly formed lot to allow for the construction.

The property is within the Medical Community District and is currently divided into three 3,175 sf lots running parallel to 5th Street as was common in 1907 when the Leonard Addition was brought into city limits, see PLAT #3. The Medical Community District allows for any use permitted in the Residence A or B districts along with hospitals, sanitariums, or legally recognized professional medical services with a minimum lot area of 5,000 sf. KVP's variance request would waive the 5,000 sf lot size requirement and allow 4,762 sf, a loss of 238 sf.

The setbacks for different zoning districts vary slightly, however, any new building permit on the property would require compliance with the setbacks. Building Inspector Walter Snyder has verified that all setbacks can be met on the two newly created lots. County Land Specialist Noah Pyle has verified that all that is needed to create the two new lots would be an aggregation/boundary line adjustment survey that the county would record and the Department of Revenue would update on the taxes and GIS systems.

Streets supervisor Justin Williams has verified that water and sewer services are located under 5th Street and accessible to both newly created lots. The new services to both homes would require three street opening permits for \$300, water tapping and plant investment fees (PIF) of \$3,969.92, and sewer tapping and PIFs of \$4,596, all payable to the city. The two new properties would bring roughly \$2,800 combined in annual user rates for water and sewer services and an estimated \$600 annually in combined property/lighting/street maintenance taxes per year to the city.

A handwritten signature in blue ink, appearing to be "SS", is written over the printed name of Samuel Sikes.

Samuel Sikes
City Administrator

From: Noah Pyle <npyle@libby.org>
Sent: Wednesday, April 8, 2026 10:47 AM
To: city.admin@cityoflibby.com
Cc: 'Mike Fantasia'; mayor@cityoflibby.com; deputy.admin@cityoflibby.com
Subject: RE: Lot Line Adjustment or Aggregation

Hi Sam,

From the counties perspective, all we need would be an aggregation/ boundary line adjustment survey, this can be done on one survey. This can be done via certificate of survey and not an amended plat (there more onerous requirements for an amended plat).

Once the survey is recorded, the department of revenue will get a copy and update the legal descriptions and the boundary lines on the cadastral GIS.

Hope that answers what you need. Let me know if you have more questions.

Noah Pyle

Lincoln County Land Specialist
512 California Ave
Libby MT 59923
406.283.2307
npyle@libby.org

This search has been conducted within the records of the Lincoln County Clerk & Records office only and to the best of our ability is complete. No liability is assumed for any errors or omissions in this search.

From: city.admin@cityoflibby.com <city.admin@cityoflibby.com>
Sent: Wednesday, April 8, 2026 10:13 AM
To: Noah Pyle <npyle@libby.org>
Cc: 'Mike Fantasia' <mikefantasia1@mac.com>; mayor@cityoflibby.com; deputy.admin@cityoflibby.com
Subject: Lot Line Adjustment or Aggregation

Noah,

Habitat homes it trying to take three narrow lots and turn them into two lots to build two homes on. The current narrow lots run parallel to 5th St. and they would like to have two lots as shown in the attachment. They are requesting a variance because the lots would be 238 sf under the minimum lot size in the city. From what I gather, here would be the steps for KVP to take. Please correct me if I'm wrong!

1. Get a variance from the city on the lot size.
2. Get with a surveyor and mark new boundaries for two lots.
3. Surveyor submits the adjusted lot lines on a new PLAT to the county.
4. The county approves the new lines.
5. The new PLAT is submitted to the city for approval and signature.
6. The County files the new PLAT to the State GIS and Department of Revenue.
7. Habitat builds the new homes.

Kootenai Valley Partners
PO Box 191, Libby, MT 59923

March 6, 2026

Samuel Sikes, Libby City Manager
925 East Spruce
Libby, Montana 59923

RE: Kootenai Valley Partners (KVP) request to aggregate lots described as: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22, totaling 9,525 sf.

Attached is an application for a zoning variance for the aggregation of three lots into two on the corner of 5th St. and Utah Avenue. As our organization has discussed with City representatives in the past, KVP would like to divide the center lot in half and add it to the adjacent lots, forming two building lots of 4,762 +/- sf each.

Along with the application, included are neighbor surveys and a map of the area showing the locations of the respondents in relation to the site. The neighbors were canvassed between February 28 and March 5. In addition to the residents included with this application, some residents were not home or did not want to fill out the survey form.

Kootenai Surveying has completed the survey field work and is currently drafting the survey plat. As soon as it is finalized, we will forward it to you.

Upon being granted the variance, KVP will submit a building permit application along with appropriate documentation for a project we hope to begin this spring.

Please contact me if you have any questions or if any part of the application is unclear or incomplete.

Thank you very much,

Mike Fantasia, Board Member, Kootenai Valley Partners
mikefantasia1@mac.com
310.922.4715

cc: KVP Board of Directors



City of Libby
Libby Montana
www.cityoflibby.com

PO Box 1428
952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
Fax (406) 293-4090

Application for Variance
City of Libby Board of Adjustment

March 6, 2026

Applicant Name: Mike Fantasia for Kootenai Valley Partners, Habitat For Humanity Inc. (KVP)
Address: PO Box 19, Libby, MT 59923
Phone: 310.922.4715 Email: mikefantasia1@mac.com

Property Owner Name: Kootenai Valley Partners, Habitat For Humanity Inc. (KVP)
Address: PO Box 19, Libby, MT 59923
Phone: 310.922.4715 Email: mikefantasia1@mac.com

Legal Description: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22, totaling 9,525 sf. Geocode is 56-4175-03-3-62-10-0000

Corner lot? Yes XXX No Current Zoning District: Medical

Variance related to: Setback____ Building/Fence Height____ Lot Coverage Percentage
Business____ Other: XXXX. Minimum lot size.

Summarize variance request:

-This property consists of three small lots which do not meet the City of Libby zoning requirements. KVP would like to aggregate these three lots into two lots in order to build two affordable houses of approximately 1,100 sf each. Each aggregated parcel would be 4,762 sf, 238 sf short of the minimum lot size of 5,000 sf.

Please answer and explain each of the following questions.

1. Will your variance amount to a rezoning of the property or change the district?
-No.

2. What special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district?
-The lots were created when there was no minimum lot size requirement. Each lot is approximately 3,175 sf, less than the 5,000 sf required under current regulations. The lots were never developed. KVP wishes to aggregate one-half the center lot into each of the end lots, creating two lots of 4,762 sf each which would be developed by KVP with a 1,100+/- sf residence.

KOOTENAI VALLEY PARTNERS VARIANCE APPLICATION

3. Did the special conditions and circumstances result from the actions of the applicant?

-No.

4. Will granting the variance requested confer a special privilege to subject property that is denied other lands in the same district?

-No, it will allow the two aggregated lots to be developed in a manner similar to adjacent properties in the neighborhood, some of which are less than 5,000 sf.

5. Will the granting of the variance be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated?

-No. Developing these lots will provide two affordable homes in city limits. The new houses will enhance the neighborhood and will allow the two lots to be developed in a similar manner as other properties in the neighborhood.

6. Will this variance be the minimum variance that will make possible the reasonable use of the land?

-Yes.

7. Will the granting of the variance be in harmony with the general purpose and intent of Chapter 17, and/or will it be injurious to the neighborhood, or otherwise detrimental to the public welfare?

-Yes, granting this variance will comply with the provisions of Chapter 17. The properties, once developed, will be compatible with other properties in the neighborhood and will not be detrimental to the public welfare.

Note: The fact that property may be utilized more profitably will not be an element of consideration before the board of adjustment.

Explain the extent of the circumstances that are creating hardship or difficulty in compliance with the City of Libby Zoning Code and list alternatives, and/or options considered by the applicant. Please provide supporting documentation:

-The three lots, as originally platted, do not meet the current zoning requirements for single family residences and therefore cannot be developed individually.

The options considered include:

- 1) No development. This provides neither entry-level housing nor tax and utility revenue to the city. It would also mean KVP would need to sell the property and try to replace it with another.*
- 2) Request a minimum lot size variance from the City and develop one 1,000+/- sf house on each. The City building inspector did not support this option and the Libby City Council twice denied KVP's request to consider this.*

Tuesday, March 3, 2026

KOOTENAI VALLEY PARTNERS VARIANCE APPLICATION

- 3) *Develop one residence on the entirety of the three parcels. This option does not provide the maximum number of residences or tax and utility revenue and greatly reduces KVP's ability to recoup its costs.*
- 4) *Create two parcels of 4,762 sf each and develop two entry level residences. This option is a compromise between one and three approved lots; it provides increased tax and utility revenue for the City and allows KVP to recoup its investment in the land..*

Provide any additional information you would like the Board to consider:

-KVP would like to add two affordable houses to the housing stock in Libby, which is inadequate for the need.

Applicant signature:  Date submitted: March 6, 2026

Board of Adjustments action: Approved___ Disapproved___ Date action taken: _____

Board notes:

CERTIFICATE OF DEDICATION

We James A. Coram and Mary L. Coram do hereby certify that we have caused to be surveyed, plotted and subdivided into blocks, streets, avenues and alleys, as shown on the accompanying plat and certificate of survey, hereunto annexed the following described tract of land to-wit:

Beginning of a point from which the 1/4 Section corner on the south side of Section 3 Township 30 North of Range 31 West 11th Meridian South 10:57:00 West 1072.14 feet and running thence North 24:58:50 East 545.00 feet thence North 65:01:10 West 995.00 feet thence South 27:56:50 West 294.00 feet thence North 65:01:10 West 975.00 feet thence South 24:48:50 West 721.00 feet thence South 65:01:10 East 1970.00 feet to place of beginning containing 3772 Acres more or less.

The said tract to be known and designated as the Leonard Addition to Libby, Flathead County, State of Montana and the lands included in all streets, avenues and alleys shown on said Plat are hereby granted and dedicated to the Public forever.

Reserving, however, unto the said J.A. Coram and Mary L. Coram, their successors and assigns the right to occupy all Streets, Avenues and Alleys of said Addition to said town, for the purpose of constructing, maintaining and operating lines of Water and Gas pipes, Telegraph, Telephone and Electric wires and poles, Street Cords, Steam and Electric Meters.

In witness whereof we have hereunto set our hands this 5th day of August A.D. 1907

James A. Coram
Mary L. Coram

State of Montana }
County of Flathead }
On this 5th day of August A.D. 1907 before me a Notary Public in and for said County and State personally appeared James A. Coram and Mary L. Coram his wife, whose names are subscribed to the foregoing instrument and who acknowledged the above instrument to me to be the same persons who subscribed thereto and that they each of them respectively executed the same freely and voluntarily without force or compulsion.

And the said Mary L. Coram, wife of the said James A. Coram, having been by me first made acquainted with the contents of said instrument, acknowledged to me on examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily without force or compulsion, or undue influence of her husband and that she did so with free and full knowledge of the contents of the same.

In witness whereof I have hereunto set my hand and official seal this 5th day of August A.D. 1907

J.F. Long
Notary Public in and for
Flathead County, State of Montana

SURVEYORS CERTIFICATE

I, Arthur B. Young, a Civil Engineer and Surveyor, do hereby certify that I made the survey of the Leonard Addition to the town of Libby, Flathead County, State of Montana, in the month of June A.D. 1907 according to the provisions of the Statutes of Montana relating to Town and Village Sites and Plats setting good and legal Stone Monuments at the intersection of the center lines of all streets as shown upon the accompanying Plat and designated that the accompanying map is to the best of my knowledge and belief, a correct survey completed June 18th A.D. 1908

Arthur B. Young

State of Montana }
County of Flathead }
I, William J. Morrison, a Notary Public in and for said County and State do hereby certify that on this 29th day of July A.D. 1907 personally appeared before me Arthur B. Young to me known as the individual described in and who executed the above instrument and who duly acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and official seal this 29th day of July A.D. 1907

William J. Morrison
Notary Public in and for
Flathead County, State of Montana

State of Montana }
County of Flathead }
We, Halmar Lewis, R.W. Mann, and John L. White, County Commissioners in and for the above named County, do hereby certify that this Map or Plat of the Leonard Addition to Libby, Flathead County, Montana, is by us approved this day.

In witness whereof we have hereunto set our hands and the Seal of Flathead County, Montana, this 7th day of August A.D. 1907

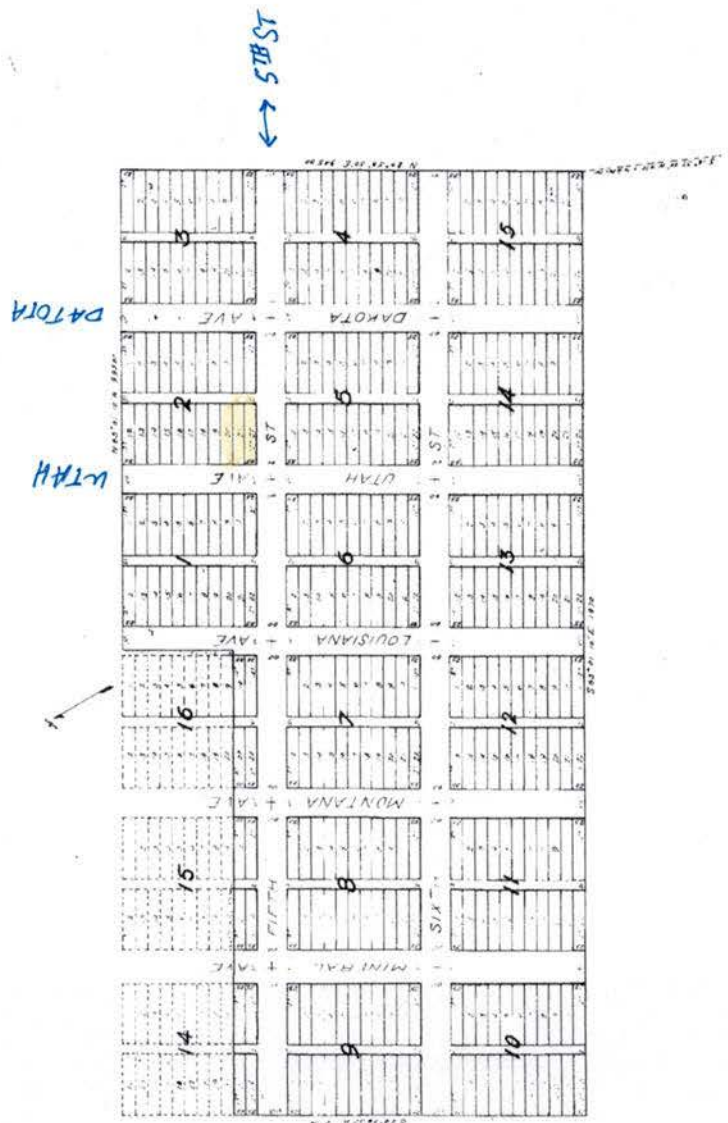
Halmar Lewis Chairman
R.W. Mann Commissioner
J.E. White Commissioner

State of Montana }
County of Flathead }
I, C.T. Young, County Clerk and Recorder, do hereby certify that this Map or Plat of the Leonard Addition to Libby, Flathead County, Montana, is by us approved this day.

In witness whereof we have hereunto set our hands and the Seal of Flathead County, Montana, this 7th day of August A.D. 1907

C.T. Young
County Clerk and Recorder

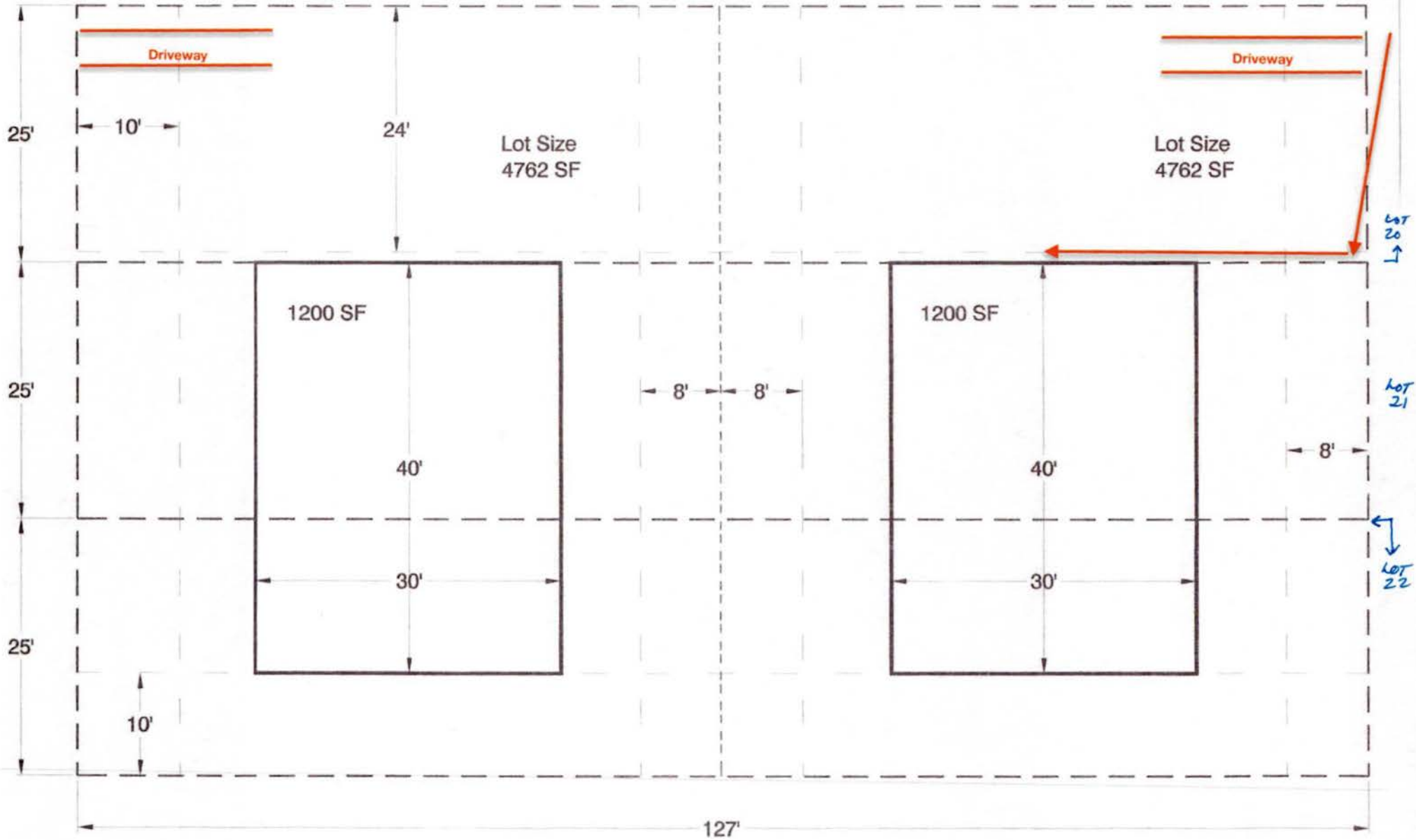
PLAT OF
LEONARD ADDITION
TO
LIBBY MONTANA
SCALE 1"=80'
TRANSPOSED



State of Montana }
County of Flathead }
Filed on this 6th day of Aug.
A.D. 1907 at 1:40 o'clock PM
C.T. Young
County Clerk & Recorder
By Fax 3210 chg
Deputy

5th St and Utah (2 Lots)

3/3/2024 1:27:20 PM, 1:151.359



City Lot Lines - - - - -
Proposed Lot Lines - - - - -
Setbacks - - - - -
Houses _____





City of Libby Libby Montana

www.cityoflibby.com

PO Box 1428
952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
Fax (406) 293-4090

Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: CLYDE KNECHT

Address: 403 UTAH AVENUE

Phone: [REDACTED] Email: [REDACTED]

I was contacted by _____ concerning the above proposed variance request on 2/28/2026.

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: TWO DWELLINGS, TWO YARDS AND UP TO FOUR OR MORE VEHICLES FOR TWO COUPLES AND/OR FAMILIES IN ONE SMALL SPACE?

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: [Signature] Date: 2/28/2026

Print Name: CLYDE KNECHT



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Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Joni Rosencrantz

Address: 407 Utah Ave. Libby

Phone: [REDACTED] Email: _____

I was contacted by Roger concerning the above proposed variance request on 5th & Utah.

I have no objections to the proposed change.

I oppose the proposed change.

I would like further contact and information concerning the proposed change.

Additional Comments: _____

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: Joni M. Rosencrantz Date: 2-28-26

Print Name: Joni M. Rosencrantz



City of Libby Libby Montana

www.cityoflibby.com

PO Box 142B
952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
Fax (406) 293-4090

Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Sandra Bachmann / Tom Porter

Address: 415 Utah Ave

Phone: [REDACTED] Email: [REDACTED]

I was contacted by Habitat for humanity concerning the above proposed variance request on 2-27-2026.

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: Habitat does not keep their properties in great shape. Pretty messy residents and property. Not a fan for this non-sense. No follow-up on property(s) - look good for a short time.
 Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: [Signature] Date: 2-27-2026

Print Name: Tom Porter



City of Libby Libby Montana

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Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Amy Williams - Achievements Inc - Ex. Director

Address: 418 Utah Ave, Libby

Phone: [REDACTED] Email: [REDACTED]

I was contacted by Mike Fantasia concerning the above proposed variance request on 3-5-26

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: _____

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: Amy Williams Date: 3-5-26

Print Name: Amy Williams



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Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Brianne Barnes

Address: 504 Utah Ave, Libby MT 59923

Phone: [Redacted] Email: [Redacted]

I was contacted by Joh^{11/10/20} Dan/Robert concerning the above proposed variance request on The empty corner across the street

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: I do not think it best use for the empty lot.

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signer: [Signature] Date: 2.20.20

Print Name: Brianne Barnes



City of Libby Libby Montana

www.cityoflibby.com

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952 E. Spruce Street
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(406) 293-2731
Fax (406) 293-4090

Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Cheryanna Pawley

Address: 410 Est 5th Street

Phone: [REDACTED] Email: [REDACTED]

I was contacted by Robert Reeves concerning the above proposed variance request on 2-28-26.

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: _____

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: Cheryanna Pawley Date: 2-28-26

Print Name: Cheryanna Pawley



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Fax (406) 293-4090

Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Jon-Paul Bardole

Address: 408 Dakota Ave.

Phone: [REDACTED] Email: [REDACTED]

I was contacted by Dan Desch concerning the above proposed variance request on _____.

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: _____

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: Jon-Paul Bardole Date: 2-28-2026

Print Name: Jon-Paul Bardole



City of Libby Libby Montana

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(406) 293-2731
Fax (406) 293-4090

Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, S03, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: Crystal Light

Address: 416 Dakota Ave Apt A

Phone: [Redacted] Email: [Redacted]

I was contacted by Dan Desch concerning the above proposed variance request on _____.

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: Please let them build. Our community needs all the homes we can get.

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: [Signature] Date: 02/29/2016

Print Name: Crystal Light



City of Libby Libby Montana

www.cityoflibby.com

PO Box 1428
952 E. Spruce Street
Libby MT, 59923
(406) 293-2731
Fax (406) 293-4090

Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Kootenai Valley Partners, Habitat For Humanity Inc.

Address of variance request: Leonard Addition, 503, T30 N, R31 W, BLOCK 2, Lots 20 thru 22
(Northeast corner of 5th and Utah)

Property owned by: Kootenai Valley Partners, Habitat For Humanity Inc.

Zoning District: Medical

Proposed variance request: Request to create two buildable lots from three lots. Each lot would total 4,762 square feet

Respondent: (completing survey)

Name: GARY GILL

Address: 503 DAKOTA AVE.

Phone: [REDACTED] Email: [REDACTED]

I was contacted by Mike Fantasia concerning the above proposed variance request on March 5, 2026

- I have no objections to the proposed change.
- I oppose the proposed change.
- I would like further contact and information concerning the proposed change.

Additional Comments: _____

Prior to a decision by the City of Libby Board of Adjustments, a public hearing will be held to discuss the variance request.

Signed: Gary E. Gill Date: 5 Mar 26

Print Name: Gary E. Gill

Chapter 17.18 - MEDICAL COMMUNITY DISTRICT

Sections:

17.18.010 - Uses.

Within any Medical Community District, no building, structure, or premises shall be used, arranged, or designed to be used except for one or more of the following uses:

- A. Any use permitted in Residence A or Residence B Districts;
- B. Hospitals and sanitariums, but not for contagious diseases;
- C. Office or laboratory of a physician, dentist, or any legally recognized professional medical person or group.

(Ord. 1359, 1987)

17.18.020 - Height.

No building except hospitals shall exceed thirty-five (35) feet or two and one-half stories in height. Hospitals shall not exceed seventy (70) feet or six stories in height.

(Ord. 1594 § 115, 2002; Ord. 1359, 1987)

17.18.030 - Accessory buildings.

Accessory buildings not over fifteen (15) feet high may be located in the rear yard; provided such buildings occupy not more than twenty-five percent (25%) of the rear yard area; provided, further, such accessory buildings come not nearer than three feet to any lot line.

(Ord. 1359, 1987)

17.18.040 - Corner lot.

In the case of a corner lot, no wall of an accessory building shall be nearer to a side street line than the side line of the main building and it shall also be as far from the side street line as the setback line fixed by this chapter for building on the side street lots or as near thereto as the width of the lot permits; provided that it be not less than fifteen (15) feet from side line.

(Ord. 1359, 1987)

17.18.050 - Side yards.

The minimum width of any side yard shall be seven feet and the least sum of the widths shall be sixteen (16) feet.

(Ord. 1359, 1987)

17.18.060 - Setback line.

No building shall be erected, reconstructed, or altered so as to project in any manner beyond a line which is distant from the street line, the average distance therefrom of the buildings fronting on the same side of the street within the block.

Where no buildings exist fronting on the same side of the street within the block, no new building shall be erected with its street walls or walls nearer than ten (10) feet to the front property line being inside the sidewalk.

Steps extending beyond the front wall of the building are exempt from the foregoing provisions.

The foregoing setback line provisions shall apply only along the front lot line.

(Ord. 1359, 1987)

17.18.070 - Lot area.

The minimum lot area requirements shall be five thousand (5,000) square feet. Lot area, parking requirements and other pertinent items as are consistent with good zoning practice and the practical development of this district.

(Ord. 1359, 1987)

17.18.080 - Vacant lots.

These shall be kept free of debris, rubbish, or garbage at all times. Special uses of vacant lots may be permitted by written authority of the building inspector and the board of adjustment, with the consent of the owners of eighty percent (80%) of the property within three hundred (300) feet of the lot or lots.

(Ord. 1359, 1987)

17.18.090 - Construction.

All construction shall be of a standard approved by the building inspector.

(Ord. 1359, 1987)

17.18.100 - Intent.

Any business may be placed in this district only by written approval of the board of adjustment, after written application, together with submission of plans and specifications showing actual location of the proposed building and general arrangements on any piece of ground, it being the intention to restrict this area to medical service and still maintain a practical standard for residents.

(Ord. 1359, 1987)

17.18.110 - Signs.

- A. Signs pertaining to the lease, sale, or use of a lot or building may be placed thereon; provided, that the total area of all such signs does not exceed eight square feet; provided, further, that on a lot or dwelling and pertaining to the use thereof or bearing the name or occupation of an occupant shall not exceed one square foot for each family housed. A sign or building board not exceeding twelve (12) square feet in area may be erected upon the premises of a church, or other institution, for the purpose of displaying the name and activities or services therein provided. Any sign provided for herein shall not materially alter the appearance of said lot or dwelling nor affect the welfare of the neighbors.
- B. Notwithstanding any other provision of this chapter, non-illuminated political or campaign signs may be placed on the property. Any such signs may not be placed on the property so as to obstruct the vision of any driver of motor vehicles to the extent a safety hazard is created. All campaign signs must be removed within three days after the election to which the sign relates.

(Ord. 1594 § 116, 2002; Ord. 1359, 1987)

Chapter 17.36 - BOARD OF ADJUSTMENT AND APPEALS

Sections:

17.36.010 - Board of adjustment—Creation—Membership.

The board of adjustment is hereby established to act on appeal and variance applications as herein detailed. Said board [shall] consist of five members appointed by the mayor for three year terms (with staggering terms) and subject to confirmation by the city council.

Pursuant to Section 76-2-321, M.C.A., the City of Libby hereby reserves to itself the power to act as the board of adjustment.

(Ord. 1359, 1987)

(Ord. No. 1888, 12-19-2016)

17.36.020 - Meetings.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall adopt its own rules of procedure and keep a record of its procedures, showing the action of the board and the vote of each member, upon each question considered, or if absent or failing to vote, indicating such fact.

(Ord. 1359, 1987)

17.36.030 - Officers.

At the first meeting each year, the board shall appoint one (1) of its members to serve as chairman and one (1) member to serve as vice chairman.

The board's office shall be that of the city hall and files of said board shall be held therein.

(Ord. 1359, 1987)

17.36.040 - Powers and duties.

The board shall set its operating rules in accordance with Section 76-2-321, M.C.A., and shall have the following powers:

A.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this chapter or any amendment thereto.

- B. To authorize upon appeal in specific cases such variance from the terms of the chapter as will not be contrary to the public interest, where owing to special conditions, the literal enforcement of the provisions of the chapter will result in unnecessary hardship and so that the spirit of the chapter shall be observed and substantial justice done.

More specifically, the board may, after public notice and hearing, approve, conditionally approve, or deny any request to grant variances from the following requirements of this chapter:

- 1. Setback requirements;
 - 2. Yard requirements;
 - 3. Area requirements;
 - 4. Height requirements;
 - 5. Parking requirements;
 - 6. Fence and hedge; and
 - 7. Sign requirements - area, location and height.
- C. The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirements, decisions, or determination of any administrative official, or to decide in favor of the applicant or any matter upon which it is required to pass under this chapter, or to effect any variation of this chapter.

(Ord. 1359, 1987)

17.36.050 - Procedure.

Written applications for appeals or variances shall be filed in the office of the building inspector. Notwithstanding any other provisions of this chapter, a filing fee shall be paid to the city upon filing of each application for the purpose of defraying expenses incidental to proceedings. No application will be regarded as having been filed until such fee has been paid. The amount of the filing fee shall be set by resolution of the city council.

The board of adjustment shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and purpose of this chapter. Such investigation shall include inquiry to and invitation to comment from the City of Libby Planning Board. During time of appeal all construction shall cease and shall not commence until approved by the board of adjustment.

(Ord. 1594 § 119, 2002; Ord. 1359, 1987)

(Ord. No. 1888, 12-19-2016)

17.36.060 - Hearing and notice.

There shall be a hearing for each application of appeal or variance. Said hearing shall be held at an appointed time and place. Testimony shall be taken by the board of adjustment from persons interested in said application.

Notice of hearing shall be published once in a newspaper of general circulation within the city at least fifteen (15) days prior to the hearing date.

(Ord. 1359, 1987)

17.36.070 - Approval.

Before any variance can be granted, the board of adjustment shall make findings of fact setting forth and showing that the following circumstances exist:

- A. In considering all proposed variances to this chapter, the board shall, before making any findings in a specified case, first determine that the proposed variance will not amount to a rezone and constitute a change in the district boundaries shown on the official zoning map.
- B. That special conditions and circumstances exist which are peculiar to the land such as size, shape, topography, or location, not applicable to other lands in the same district and that literal interpretation of the provisions of this chapter would deprive the property owner of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this chapter.
- C. That the special conditions and circumstances do not result from the actions of the applicant.
- D. That granting the variance requested will not confer a special privilege to subject property that is denied other lands in the same district.
- E. That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which subject property is situated.
- F. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land.
- G. The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.
- H.

The fact that property may be utilized more profitably will not be an element of consideration before the board of adjustment.

(Ord. 1359, 1987)

17.36.080 - Conditions of approval.

In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that will ensure that the purpose and intent of this chapter shall not be violated. Violation of such conditions and safeguards when made part of the terms under which the variance is granted shall be deemed a violation of this chapter and punishable under Section 17.38.130, Penalties.

(Ord. 1359, 1987)

17.36.090 - Definition of public interest.

With respect to uses of lands, buildings and other structures, this chapter is declared to be a definition of the public interest by the city council, and the spirit of this chapter will not be observed by any variance which permits a use not generally permitted in the district involved, or any use expressly or by implication prohibited by terms of this chapter in said district. Therefore, under no circumstances shall the board of adjustment grant a variance to permit a use not generally permitted in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.

(Ord. 1359, 1987)

17.36.100 - Appeals from the board of adjustment.

Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to the city council a verified petition setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the city council within thirty (30) days after the filing of the decision in the office of the board of adjustment.

(Ord. 1359, 1987)

17.36.110 - Time decision effective.

The decision of the board of adjustment shall be final except as provided in Section 17.36.100 and if a building permit or land use permit is not obtained for the subject property within six (6) months from the date of the board's decision, the variance shall be automatically cancelled and become null and void.

(Ord. 1359, 1987)

City of Libby

From: benmontgomery
Sent: Tuesday, May 12, 2026 1:31 PM
To: City of Libby
Subject: Agenda request

Flag Status: Flagged

Hello Leann,

I was hoping to be placed on the agenda for the Monday city council meeting to make the formal request to change the skate park bench to a picnic table. Once we that approved I will get that ordered and set up.

Please let me know if you need any info from me.

Thanks!

-Ben Montgomery

Councilor Taylor believed the question was, do subcommittee meetings have to be opened to the public, yes, they do. Councilor Smith commented that would defeat the purpose of negotiating. Mr. Taylor said he was unaware it had been dissolved until Mr. Sikes email.

Approve propane bid from City Service Valcon:

Mr. Sikes explained the differences in the bids.

Councilor Smith **MADE A MOTION** to approve **propane bid from City Service Valcon**, Councilor Zimmerman **SECONDED**.

Public Comment: None

Councilors Berke, Burger, Kolp, Smith, Taylor, and Zimmerman voted **FOR**.

MOTION PASSED.

Approve Audit Contract with Nexus CPA Group for Fiscal Years 2025 ,2026, 2027:

Clerk/Treasurer Monigold explained the new contract will be with the same personnel, the current owner is retiring, a member of the firm has purchased and reorganized under Nexus CPA Group. Ms. Monigold highlighted the differences in cost.

Councilor Burger **MADE A MOTION** to approve the audit contract with Nexus CPA Group for Fiscal Years 2025 ,2026, 2027, Councilor Smith **SECONDED**.

Public Comment: None

Councilors Berke, Kolp, Smith, Taylor, and Zimmerman voted **FOR**.

MOTION PASSED.

Request for Community Development funds for Skateboard cost overrun:

Ben Montgomery explained his request for Community Development funds for the remaining Skateboard project costs.

The council discussed the request with Mr. Montgomery.

Councilor Smith was in support of up to \$5000 with receipts and to account for any changes.

Councilor Smith **MADE A MOTION** to issue a grant from the Community Development Fund for up to \$5,000 to complete the project, Councilor Zimmerman **SECONDED**.

Public Comment: None

Councilors Berke, Burger, Kolp, Smith, Taylor, and Zimmerman voted **FOR**.

MOTION PASSED.

Approve all claims received to date:

Councilor Zimmerman **MADE A MOTION** to approve all claims received to date, Councilor Burger **SECONDED**.

Public Comment: None

Councilors Berke, Burger, Kolp, Smith, Taylor, and Zimmerman voted **FOR**.

MOTION PASSED.

Approve all business license applications received to date:

Bowles Handyman Services and Mountain Edge Media LLC

Councilor Zimmerman **MADE A MOTION** to approve all business license applications received to date, Councilor Burger **SECONDED**.

Public Comment: None

Councilors Berke, Burger, Kolp, Smith, Taylor, and Zimmerman voted **FOR**.

MOTION PASSED.

Unfinished Business:

Street Committee's recommendation regarding the abandonment of the city owned right-of-way off City Service Road:

Mr. Sikes explained during a property review, it was discovered that the Department of Revenue has mistakenly listed two separate properties as one, leading the Sooters to pay city taxes on non-city property since June 24, 1964. This error will be corrected by the county and the Department of Revenue, regardless of whether the city chooses to abandon the property. Options outlining the pros and cons of abandonment and the next steps to resolve the issue will be prepared for the next council meeting.

Councilor Smith inquired if the city would owe the Sooters for the taxes paid. Mr. Sikes said according to the Department of Revenue it would be going through the County, and the city would have no involvement.

General Comments from Council:

Community Development Fund Request

The funds requested are to offset final costs incurred for the mini-ramp and to complete and improve the park feature.

We were \$2,121.85 over the projected budget due to increases in freight costs, as well as contractors and services charging more than initially quoted.

The current outstanding charges are reflected below:

-\$1071.85	Welding Solutions (Fabrication and crane)
-\$500.	Sod
-\$250.	Skid steer rental
-\$300.	Custom park sign

Total

-\$2121.85

Projected cost for improvements

\$1040.	Sod (Delivery and installation supplies)
\$1286.	Benches x 2

Total

\$2326

Total amount requested for overages and improvements:

\$4447.85



City of Libby

From: Sarah Long <slong@libby.org>
Sent: Thursday, May 14, 2026 10:36 AM
To: clerk.treasurer@cityoflibby.com
Subject: Sping Up Libby Logger Days fun run
Attachments: Proposed 5k route.pdf

Hi Leeann!

My name is Sarah Long and I am writing to ask to be put on the City Council agenda for the 5/18/26 meeting to ask for permission to host a fun run 5K on June 20 for Logger Days. I have attached the proposed route and gotten approval from Libby City Police Department. Please let me know if you would like any more information before the meeting on Monday.

Thank you

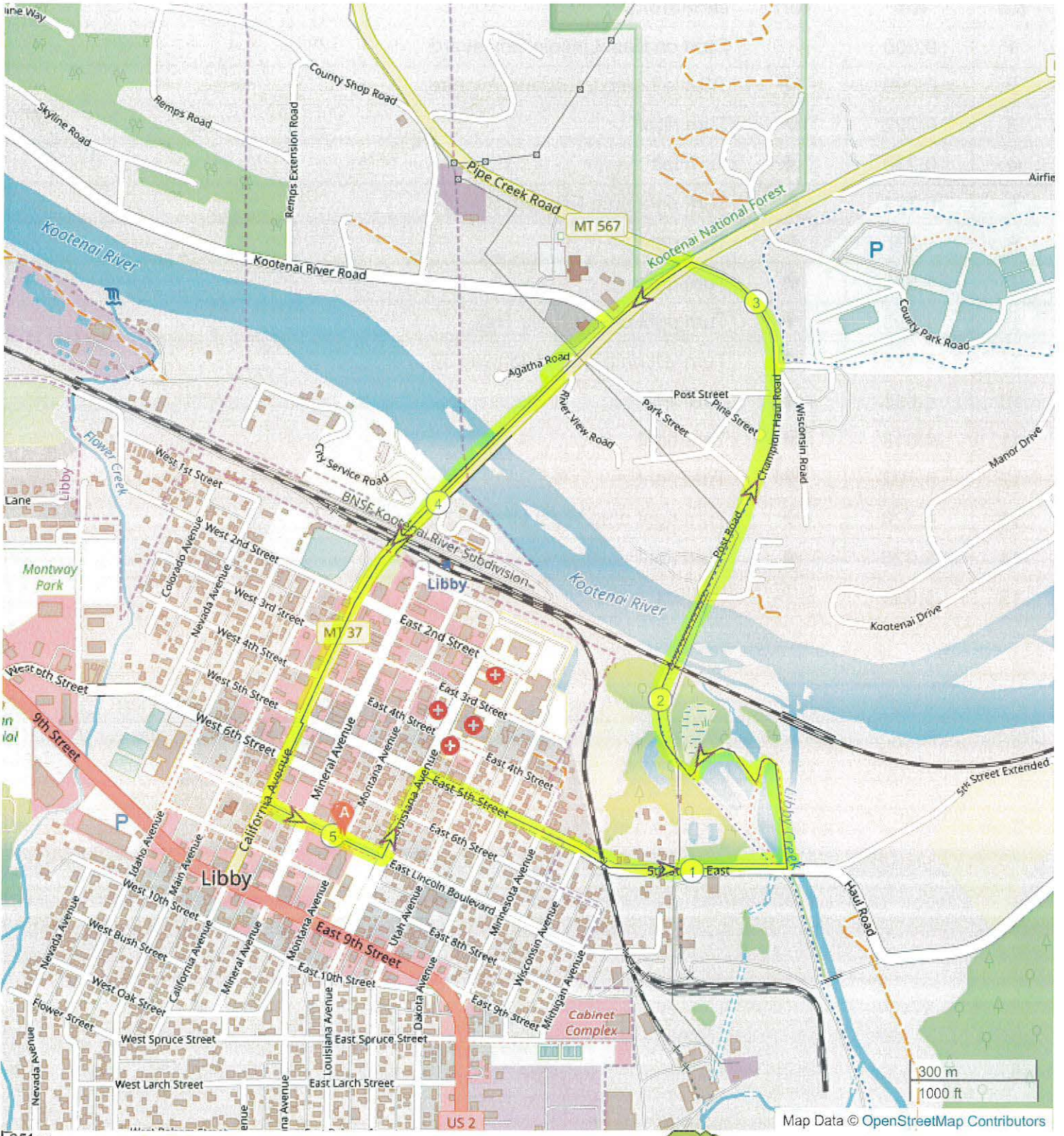


SARAH LONG

*Disease Intervention Specialist/
Tobacco Education Specialist*

-  406-283-2467
-  confidential fax 406-283-2466
-  slong@libby.org
-  418 Mineral Avenue Libby, MT 59923
-  lincolncountymt.us/health-department-home/
-  <https://www.facebook.com/LincolnMHealth/>

Unnamed Route



AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by



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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This is an Agreement between **City of Libby** (Owner) and **TD&H Engineering** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Montana Ave Lift Station Improvements** (Project). Other terms used in this Agreement are defined in Article 7. Engineer's services under this Agreement are generally identified as design and construction services for **replacement of the existing Montana Ave Lift Station**.

Owner and Engineer further agree as follows:

ARTICLE 1—SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.
- B. All phases of service will include Management of Engineering Services as shown in Exhibit A.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Project Information

- A. To the extent Owner has not already provided the following, or has new, additional, or revised information from that previously provided, Owner shall provide Engineer with information and data needed by Engineer in the performance of Basic and Additional Services, including Owner's:
 - 1. design objectives and constraints;
 - 2. space, capacity, and performance requirements;
 - 3. flexibility and expandability needs;
 - 4. design and construction standards;
 - 5. budgetary limitations; and
 - 6. any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, Owner shall obtain, furnish, or otherwise make available (if necessary through retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services; or, with consent of Engineer, Owner may authorize the Engineer to obtain or provide all or part of such additional information as Additional Services. Such additional information or data may include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Surveys, topographic mapping, and utility documentation.
 - 4. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

5. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- C. Owner shall examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
 - D. Owner shall furnish to Engineer data as to Owner's anticipated costs for services to be provided to Owner by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) so that Engineer may assist Owner in collating the various cost categories that comprise Total Project Costs.
 - E. Owner shall advise Engineer if any invention, design, process, product, or device that Owner has requested, required, or recommended for inclusion in the Drawings or Specifications will be subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights.
 - F. Owner shall inform Engineer as to whether Engineer's assistance is requested with respect to Owner's evaluation of the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
 - G. Owner shall inform Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- 2.02 Owner's Instructions Regarding Bidding/Proposal and Front-End Construction Contract Documents
- A. Owner shall give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable) and Owner's construction contract practices and requirements, and furnish to Engineer (or give specific directions requesting Engineer to use copies already in Engineer's possession) the following:
 1. Owner's standard contract forms, general conditions (if other than the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract), supplementary conditions, text, and related documents and content for Engineer to include in the draft Bidding/Proposal Documents, and in draft Front-End Construction Contract Documents;
 2. insurance and bonding requirements;
 3. protocols for electronic transmittals during bidding and construction;

4. Owner's safety and security programs applicable to Contractor and other Constructors;
 5. diversity and other social responsibility requirements;
 6. bidding and contract requirements of funding, financing, or regulatory entities;
 7. other specific conditions applicable to the procurement of construction or contract documents;
 8. any other information necessary for Engineer to assist Owner in preparing its Bidding/Proposal Documents and Front-End Construction Contract Documents.
- B. Owner shall have responsibility for the final content of (1) such Bidding/Proposal Documents, and (2) such Front-End Construction Contract Documents, other than content furnished by Engineer concerning the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters.
1. Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. If there will be an advertisement soliciting bids for construction, Owner shall place and pay for such advertisement. **If Engineer places the advertisement, then advertisement cost shall be reimbursed through this Agreement under the Bidding Phase.**

2.03 Owner-Furnished Services

- A. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, Owner shall obtain, as required for the Project:
1. Accounting, bond and financial advisory services (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services, including attorney review of proposed Construction Contract Documents, legal services required by Owner, legal services needed as a result of issues raised by Contractor, and Project-related legal services reasonably requested by Engineer.
 3. Auditing services, including those needed by Owner to ascertain how or for what purpose Contractor has used money paid to it.
- B. ~~Owner shall provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Owner shall provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor. **Provided by Engineer per Exhibit A, Article A2.02.A.36**~~
- C. Owner shall acquire or arrange for acquisition of the Site(s) and any temporary or permanent rights of access, easements, or property rights needed for the Project.

- D. With respect to the portions or phases of the Project designed or specified by Engineer, Owner shall provide, obtain, or arrange for:
 - 1. all required reviews, approvals, consents, and permits from governmental authorities having jurisdiction, and
 - 2. such reviews, approvals, and consents from others as may be necessary for completion of each portion or phase of the Project.
- E. Owner may delegate to Contractor or others the responsibilities set forth in Paragraphs 2.03.C and D.

2.04 Owner's General Responsibilities

- A. Owner shall inform Engineer of the policies, procedures, and requirements of Owner that are applicable to Engineer's performance of services under this Agreement.
- B. Owner shall provide Engineer with Owner's budget for the Project, including type and source of funding to be used, and will promptly inform Engineer if the budget or funding sources change.
- C. Owner shall inform Engineer in writing of any safety or security programs that are applicable to the personnel of Engineer, its Subconsultants, and Engineer's Subcontractors, as they visit the Site or otherwise perform services under this Agreement.
- D. Owner shall arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under this Agreement.
- E. Owner shall provide necessary direction and make decisions, including prompt review of Engineer's submittals, and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its services.
- F. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- G. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.
- H. Owner shall advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.

- I. If Owner designates a construction manager, site representative, or any individual or entity other than, or in addition to, Engineer to represent Owner at the Site, Owner shall define and set forth as an exhibit to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- J. Owner shall:
 - 1. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job-related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
 - 2. Primarily communicate with Engineer's Subcontractors and Subconsultants through the Engineer.
 - a. Promptly inform Engineer of the substance of any communications between Owner and Engineer's Subcontractors or Subconsultants.
 - b. Refrain from directing the services of Engineer's Subcontractors or Subconsultants.
 - 3. Authorize Engineer to provide Additional Services as set forth in Article 2 of Exhibit A of the Agreement, as required.
 - 4. Perform or provide the following:
 - a. **Owner shall locate and identify all utilities owned and operated by the Owner (a.k.a. "perform locates") in accordance with the American Public Works Association (APWA) "Guidelines for Uniform Temporary Marking of Underground Facilities" upon Engineer request or upon notification through the One Call Utility system (811). The Owner shall perform locates in accordance with applicable sections of the Montana Code Annotated including MCA 69-4-503 Notification – Locating and Marking.**
- K. **Owners are responsible for compliance with Domestic Preference Requirements and will be responsible for the following:**
 - 1. **Sign agreements for engineering services, construction contracts, and all other appropriate and necessary documents which include Domestic Preference language.**
 - 2. **Sign change orders (i.e., C-941 of EJCDC) and partial payment estimates (i.e., C-620 EJCDC) and thereby acknowledge responsibility for compliance with Domestic Preference requirements.**
 - 3. **Where the Owner directly procures products, Owner will obtain Manufacturers' Certifications and provide copies to Engineer and Contractor.**

2.05 Payment

- A. Owner shall pay Engineer as set forth in Article 4 and Exhibit J.
- B. Engineer's compensation is summarized as follows; if there is a conflict between the following summary and the contents of Exhibit J, then Exhibit J will prevail.

Description of Service		Amount	Basis of Compensation
1.	Basic Services (Article 1 of Exhibit A)	\$99,732.00	Standard Hourly Rates
2.	Resident Project Representative Services	\$53,676.00	Standard Hourly Rates
4.	Additional Services (Article 2 of Exhibit A)	\$13,492.00	Standard Hourly Rates

Based on a 2-month continuous construction period..

1. Compensation items and totals based in whole or in part on Hourly Rates, Direct Labor, or Percentage of Construction Cost are estimates only.
2. Lump sum amounts incorporate Engineer's labor, overhead, profit, and Engineer's Subcontractor and Subconsultants' charges.
3. **Engineer's compensation for each delineated service summarized above will not be exceeded without the concurrence of the Agency.**

ARTICLE 3—SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit B, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.
- D. If Engineer fails, for reasons within control of Engineer, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages to the extent, if any, resulting from such failure by Engineer.

ARTICLE 4—INVOICES AND PAYMENTS

4.01 Invoices

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices, the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A, and the terms of Exhibit J. **Invoices will include a breakdown of services provided.** Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Disputed Invoices: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so; may withhold only that portion so disputed; and must pay the undisputed portion, subject to the terms of Paragraph 4.01. After a disputed item has been resolved, Engineer shall include the agreed-upon amount on a new invoice.
- C. Failure to Pay: If Owner fails to make any undisputed payment due Engineer within 30 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day, and
 - 2. Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement until Owner has paid in full amounts due. Owner waives any and all claims against Engineer for any such suspension.
- D. Sales or Use Taxes: If after the Effective Date any governmental entity takes an action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement will be in addition to the compensation to which Engineer is entitled under the terms of Exhibit J.

ARTICLE 5—OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost (if any) are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate. **Opinions of probable Construction Cost and any revisions thereof must reflect compliance with Domestic Preference requirements.**

5.02 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs. **Opinions of Total Project Costs and any revisions thereof must reflect compliance with Domestic Preference requirements.**

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standards of Performance

- A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. Technical Accuracy: Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Engineer's Subcontractors and Subconsultants: Engineer may retain such Engineer's Subcontractors and Subconsultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. Reliance on Others: Subject to the standard of care set forth in Paragraph 6.01.A, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Compliance with Laws and Regulations, and Policies and Procedures
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations,
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures, and
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. General Conditions of Construction Contract: The general conditions for any Construction Contract Documents prepared hereunder are to be the current edition of EJCDC® C-700, Standard General Conditions of the Construction Contract, prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise.
- G. Copies of Drawings and Specifications: If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one

complete electronic copy of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations, and one complete printed copy, duly signed and sealed.

- H. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant conditions whose existence Engineer cannot ascertain within the authorized scope of Engineer's services. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to Engineer in any way contingent upon Engineer signing any such document.
- I. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- J. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- K. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer.
- L. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- M. Engineer's services do not include providing legal advice or representation.
- N. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- O. While at the Site, Engineer, its Subconsultants, and Engineer's Subcontractors, and their employees and representatives will comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 Ownership and Use of Documents

- A. All Documents are instruments of service, and Engineer owns the Documents, including all associated copyrights and the right of reuse at the discretion of the Engineer. Engineer shall continue to own the Documents and all associated rights whether or not the Project is completed.
 - 1. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project.

2. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations:
 - a. Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer;
 - b. any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Subconsultants;
 - c. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and
 - d. such limited license to Owner shall not create any rights in third parties.
- B. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- C. Engineer shall inform Owner if Engineer is aware of any invention, design, process, product, or device specified in the Drawings, Specifications, or other Documents that is subject to payment (whether by Owner or Contractor) of any license fee or royalty to others, as required by patent rights or copyrights. If Engineer's good-faith inclusion in the Drawings, Specifications, or other Documents of new, innovative, or non-standard technologies, for the benefit of Owner and the Project, results in third-party claims of infringement or violation of intellectual property rights, then Owner and Engineer shall share equally the costs of defending against, settling, or paying such claims.
- D. Engineer will obtain Owner's consent, which will not be unreasonably withheld, prior to releasing any publicity, including news and press releases, promotional publications, award and prize competition submittals, and other advertising regarding the subject matter of this Agreement. Nothing herein will limit the Engineer's right to include information in statements of qualifications and proposals to others accurately describing its participation and participation of employees in the Project.

6.03 Electronic Transmittals

- A. To the fullest extent practical, Owner and Engineer agree to transmit, and accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with Exhibit F, Electronic Documents Protocol (EDP).

1. Compliance with the EDP by Engineer shall be considered a Basic Service and no direct or separate compensation will be paid to Engineer for such compliance, unless provisions for separate compensation are expressly set forth in the EDP.
 2. Engineer's costs directly attributable to changes in Engineer's Electronic Documents obligations, after the effective date of this Agreement, necessitated by revisions to Exhibit F, delayed adoption of Exhibit F, or implementation of other Electronic Documents protocols, will be compensated as Additional Services.
- B. If this Agreement does not include Exhibit F or otherwise does not establish or include protocols for transmittal of Electronic Documents by Electronic Means, then Owner and Engineer may operate without specific protocols or may jointly develop such protocols at a later date.
- C. Except as stated otherwise in Exhibit F (if included in this Agreement), when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents, or from those established in applicable protocols.
- D. This Agreement (including the EDP) is not intended to create obligations for Owner or Engineer with respect to transmittals to or from third parties, except as expressly stated in the EDP.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G.
- B. Additional Insureds: The Engineer's commercial general liability, automobile liability, and umbrella or excess liability policies, must:
1. include and list as additional insureds Owner, and any individuals or entities identified as additional insureds in Exhibit G;
 2. include coverage for the respective officers, directors, members, partners, and employees of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations); and
 4. not seek contribution from insurance maintained by the additional insured.
- C. Owner shall procure and maintain insurance as set forth in Exhibit G.
- D. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer, its Subconsultants, and Engineer's Subcontractors to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project. Owner shall give Engineer access to any certificates of insurance and copies of endorsements and policies obtained by Owner from Contractor.

- E. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates must be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
 - 1. Upon request by Owner or any other insured, Engineer shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subconsultants and Engineer's Subcontractors. In any documentation furnished under this provision, Engineer may redact (a) any confidential premium or pricing information and (b) any wording specific to projects or jurisdictions other than those applicable to this Agreement.
- F. All construction contracts entered into by Owner with respect to the Project must require builder's risk or similar property insurance.
- G. All policies of property insurance relating to the Project, including but not limited to any builder's risk or similar policy, must allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer, its Subconsultants, or Engineer's Subcontractors. Owner and Engineer waive all rights against each other, Contractor, Engineer's Subcontractors and Subconsultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any such builder's risk or similar policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- H. All policies of insurance must contain a provision or endorsement that the coverage afforded will not be canceled, and that renewal will not be refused, until at least 10 days' prior written notice has been given to the primary insured. Upon receipt of such notice, the primary insured must promptly forward a copy of the notice to the other party to this Agreement and replace the coverage being cancelled or reduced to conform to the requirements of this Agreement.
- I. At any time, Owner may request that Engineer, or Engineer's Subcontractors or Subconsultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require Engineer's Subcontractors or Subconsultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 Suspension and Termination

A. Suspension

- 1. By Owner: Owner may suspend Engineer's services for up to 90 days upon 7 days' written notice to Engineer.

2. By Engineer: Engineer may, after giving 7 days' written notice to Owner, suspend services under this Agreement:
 - a. if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraphs 4.02.B and 4.02.C;
 - b. in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.09.D; or
 - c. if persistent circumstances beyond the control of Engineer have prevented it from performing its obligations under this Agreement.
- B. Termination for Cause
1. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.
 - a. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1 if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.
 2. In addition to its termination rights in Paragraph 6.05.B.1, Engineer may terminate this Agreement for cause upon 7 days' written notice:
 - a. if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional;
 - b. if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control; or
 - c. as the result of the presence at or adjacent to the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.09.E.
 3. Engineer will have no liability to Owner on account of any termination by Engineer for cause.
- C. Termination for Convenience: Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- D. Extension of Effective Date of Termination: If Owner terminates the Agreement for cause or convenience, Owner may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files. Engineer shall be entitled to compensation for such tasks.
- E. Payments Upon Termination: In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services

performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.02.A.

1. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the Documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
2. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Subcontractors or Subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit J.

6.06 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, claims arising out of this Agreement or money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 1. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 2. Nothing in this Agreement will be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 3. Owner agrees that the substance of the provisions of this Paragraph 6.06.C will appear in the Construction Contract Documents.

6.07 Dispute Resolution

- A. Unless otherwise required by Exhibit H, Owner and Engineer shall resolve all disputes in the following manner:
 1. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice, prior to invoking mediation.

2. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process will be conducted on a confidential basis, and must be completed within 120 days.
3. If the parties fail to resolve a Dispute through negotiations under Paragraph 6.07.A.1 or mediation under Paragraph 6.07.A.2, then:
 - a. either or both may invoke the applicable dispute resolution procedures of Exhibit H for final resolution of Disputes.
 - b. If Exhibit H is not included, or if no final dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.08 Controlling Law; Venue

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.
- B. Venue for any exercise of rights at law will be the state court having jurisdiction at the location of the Project; or at the choice of either party, and if federal jurisdictional requirements can be met, in federal court in the district in which the Project is located.

6.09 Environmental Condition of Site

- A. Owner represents to Engineer that, as of the Effective Date, to the best of Owner’s knowledge, no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. Undisclosed Constituents of Concern: For purposes of this Paragraph 6.09, the presence at or adjacent to the Site of Constituents of Concern that were not disclosed to Engineer pursuant to Paragraph 6.09.A, in such quantities or circumstances that such Constituents of Concern may present a danger to persons or property exposed to them, will be referred to as “undisclosed” Constituents of Concern.
 1. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of this Agreement or the Construction Contract, are not undisclosed Constituents of Concern.
 2. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under this Agreement are not undisclosed Constituents of Concern.
 3. Constituents of Concern that are to be located, identified, studied, removed, or remediated as part of the services under another professional services contract for Owner, or as part of the work under a construction or remediation contract, are not undisclosed Constituents of Concern if Engineer has been informed of the general scope of such contract.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate authorities having jurisdiction if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, or if encountered, uncovered, or revealed Constituents of Concern are present in substantially greater quantities or substantially different locations than disclosed or anticipated, or if investigative or remedial action, or other professional services, are necessary or required by applicable Laws and Regulations with respect to such Constituents of Concern, then Engineer may, at its option and without liability for direct, consequential, or any other damages, suspend performance of services on the portion of the Project adversely affected thereby until such portion of the Project is no longer so affected; and Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- E. If the presence at the Site of undisclosed Constituents of Concern, or of Constituents of Concern in substantially greater quantities or in substantially different locations than disclosed or anticipated, adversely affects the performance of Engineer's services under this Agreement, then:
1. if the adverse effects do not preclude Engineer from completing its Project services in general accordance with this Agreement on unaffected or marginally affected portions of the Project, Engineer may accept an equitable adjustment in its compensation or in the time of completion, or both; and the Agreement will be amended to reflect changes necessitated by the presence of such Constituents of Concern; or
 2. if the adverse effects are of such materiality to the overall performance of Engineer that it cannot complete its services without significant changes to the scope of services, time of completion, and compensation, then Engineer may terminate this Agreement for cause on 7 days' written notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and will not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

- B. Environmental Indemnification: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer, its Subconsultants, Engineer's Subcontractors, and their officers, directors, members, partners, agents, employees, and subconsultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that:
 - 1. any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and
 - 2. nothing in this paragraph obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- D. Percentage Share of Negligence: To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, will not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. Mutual Waiver: To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. Such excluded damages include but are not limited to loss of profits or revenue; loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; and cost of capital.

6.11 Records Retention

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, or such other period as required by Laws and Regulations, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.12 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, and delivered: in person (by commercial courier or otherwise); by registered or certified mail; or by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line. All such notices are effective upon the date of receipt.
- B. Survival: Subject to applicable Laws and Regulations, all express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Engineer.
- D. No Waiver: A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Agreement.
- E. Accrual of Claims: To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement will be deemed to have accrued, and all statutory periods of limitation will commence, no later than the date of Substantial Completion; or, if Engineer's services do not include Construction Phase services, or the Project is not completed, then no later than the date of Owner's last payment to Engineer.

ARTICLE 7—DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (including the exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 1. Addenda—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. Additional Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 2 of Exhibit A of this Agreement.
 3. Agreement—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. Basic Services—The services to be performed for or furnished to Owner by Engineer in accordance with Article 1 of Exhibit A of this Agreement.
 6. Bidding/Proposal Documents—Documents related to the selection of the Contractor, including advertisements or invitations to bid; requests for proposals; instructions to bidders or proposers, including any attachments such as lists of available Site-related documents; bid forms; bids; proposal forms; proposals; bidding requirements; and qualifications documents.
 7. Change Order—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 8. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an

adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.

9. Constituents of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. Construction Contract—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. Construction Contract Documents—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract. See also definition of “Front-End Construction Contract Documents” below.
12. Construction Contract Price—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. Construction Contract Times—The number of days or the dates by which Contractor must: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
14. Construction Cost—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, or Subconsultants, or Engineer’s Subcontractors), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, design-builders, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
16. Contractor—The entity or individual with which Owner enters into a Construction Contract.
17. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or Electronic Document form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, Drawings, Specifications, data, reports, building information models, and civil integrated management models.

18. Drawings—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. Effective Date—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. Electronic Document—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. Electronic Means—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Agreement. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. Engineer—The individual or entity named as such in this Agreement.
23. Engineer's Subcontractor—An individual, firm, vendor, or other entity having a contract with Engineer to furnish general services, equipment, or materials with respect to the Project as an independent contractor.
24. Field Order—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
25. Front-End Construction Contract Documents—Those Construction Contract Documents whose primary purpose is to establish legal and contractual terms and conditions, typically including the Owner-Contractor agreement, bonds, general conditions, and supplementary conditions. The term excludes the Drawings and Specifications, and any Construction Contract Documents delivered or issued after the effective date of the Construction Contract.
26. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
27. Owner—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
28. Project—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

29. Record Drawings—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
30. Resident Project Representative—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of the RPR.
31. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
32. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
33. Site—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
34. Specifications—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
35. Subconsultant—An individual, design firm, consultant, or other entity having a contract with Engineer to furnish professional services with respect to the Project as an independent contractor.
36. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
37. Submittal—A written or graphic document, prepared by or for Contractor, which the Construction Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Construction Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Construction Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

38. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
39. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
40. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of Construction Cost), Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
41. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
42. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
43. Work Change Directive—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
44. **Agency – Funding Agencies include the Montana Coal Endowment Program and Renewable Resource Grant.**
45. **Contractors Certification – A certification submitted by Contractor that, to the best of the Contractor’s knowledge and belief, all Work complies with Domestic Preference requirements.**

46. **Domestic Preference – The Build America, Buy America Act (BABA) requirements under Title IX of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. 117-58, §§ 70901-70953, and 2 CFR part 184.**
 47. **Manufacturer’s Certification – Documentation provided by the Manufacturer stating that Domestic Preference requirements have been satisfied for all provided items.**
- B. Terminology
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8—EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits to Agreement

The following exhibits are incorporated by reference and included as part of this Agreement:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Deliverables Schedule.
- C. Exhibit C, Amendment to Owner-Engineer Agreement (form).
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, EJCDC® C-626, Notice of Acceptability of Work (form).
- F. Exhibit F, Electronic Documents Protocol (EDP).
- G. Exhibit G, Insurance.
- H. Exhibit H, **Not Used.**
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Payments to Engineer for Services and Reimbursable Expenses.

8.02 Total Agreement

- A. This Agreement (which includes the exhibits listed above) constitutes the entire contractual agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit C to this Agreement.

8.03 Designated Representatives

- A. With the execution of this Agreement, Engineer and Owner shall each designate a specific individual to act as representative under this Agreement. Such an individual must have authority to transmit instructions, receive information, and render decisions with respect to this Agreement on behalf of the party that the individual represents.

8.04 Engineer's Certifications

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 Conflict of Interest

- A. Nothing in this Agreement will be construed to create or impose any duty on the part of Engineer that would be in conflict with Engineer's paramount obligations to the public health, safety, and welfare under the professional practice requirements governing Engineer, its Subconsultants, and all licensed professionals employed by Engineer or its Subconsultants.
- B. If during the term of this Agreement a potential or actual conflict of interest arises or is identified:
 1. Engineer and Owner together will make reasonable, good faith efforts to avoid or eliminate the conflict of interest; to mitigate any adverse consequences of the conflict of interest; and, if necessary and feasible, to modify this Agreement to address the conflict of interest and its consequences, such that progress under the Agreement may continue.
 2. Such efforts will be governed by applicable Laws and Regulations and by any pertinent Owner's policies, procedures, and requirements (including any conflict of interest resolution methodologies) provided to Engineer under Paragraph 2.04.A of this Agreement.

8.06 Federal Requirements

- A. **Agency Concurrence.** This agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendments to this Agreement shall be effective unless the Funding Agency's designated representative concurs. Agency concurrence does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements.
- B. **Audit and Access to Records.** Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.

- C. **Restrictions on Lobbying.** Engineer and each Consultant shall comply with “Restrictions on Lobbying” if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. **Suspension and Debarment.** Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions,” to the Owner.
- E. **Telecommunications and Video Surveillance Services or Equipment Prohibitions.** The telecommunication and video surveillance services and equipment prohibitions under 2 CFR 200.216 apply to this contract. This contract may not be used to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is:
1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 2. Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 3. Telecommunications or video surveillance services provided by such entities or using such equipment.
 4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

This Agreement's Effective Date is _____

Owner:

Engineer:

City of Libby

(name of organization)

TD&H Engineering

(name of organization)

By:

(individual's signature)

By:

(individual's signature)

Date:

(date signed)

Date:

(date signed)

Name:

Hugh Taylor

(typed or printed)

Name:

(typed or printed)

Title:

Mayor

(typed or printed)

Title:

(typed or printed)

Attach evidence of authority to sign.

Attach evidence of authority to sign.

Attest:

(individual's signature)

Attest:

(individual's signature)

Title:

City Administrator

(typed or printed)

Title:

(typed or printed)

Address for giving notices:

Address for giving notices:

952 E. Spruce St.

Libby MT 59923

1800 River Drive North

Great Falls, MT 59401

Designated Representative:

Designated Representative:

Name:

Samuel Sikes

(typed or printed)

Name:

Nicole Rediske

(typed or printed)

Title:

City Administrator

(typed or printed)

Title:

Engineer

(typed or printed)

Address:

952 E. Spruce St.

Libby Mt 59923

Address:

1800 River Drive North

Great Falls, MT 59401

Phone:

(406) 293-1278

Phone:

406-761-3010

Email:

city.admin@cityoflibby.com

Email:

nicole.rediske@tdhengineering.com

EXHIBITS TO AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

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Article 1 of the Agreement, Services of Engineer, is supplemented to include the following provisions:

Baseline Information: Owner has furnished the following Project information to Engineer as of the Effective Date. Engineer’s scope of services has been developed based on this information. As the Project moves forward, some of the information may change or be refined, and additional information will become known, resulting in the possible need to change, refine, or supplement the scope of services.

Project Title: Montana Ave Lift Station Improvements
Facility Location(s): Libby, MT
Current Project Budget: \$1,059,000 (Total Funding Budget)
Funding Sources: RRG, MCEP, Local Funds
Known Design Standards: MDEQ Circular DEQ-2, NEC

Engineer shall provide Basic and Additional Services as set forth below.

ARTICLE 1—BASIC SERVICES

1.01 Management of Engineering Services

- A. All phases of Engineer's services will include management of Engineer's Project-specific responsibilities, including but not limited to the following management tasks, whether separately tracked and itemized or included as being incidental to other phase and scope task items.
1. Develop and submit an Engineering Services Schedule. The Engineering Services Schedule will:
 - a. be consistent with and serve as a supplement to the Schedule of Deliverables set forth in Exhibit B.
 - b. be updated on a regular basis, and as required to reflect any programmatic decisions by Owner.
 - c. include, but not be limited to, an anticipated sequence of tasks; estimates of task duration; interrelationships among tasks; milestone meetings and submittals; anticipated schedule of construction; and other pertinent Project events.
 2. Develop and submit detailed work plans from Exhibit A tasks.
 3. Coordinate services within Engineer's internal team, and with Subconsultants and Engineer's Subcontractors.
 4. Prepare for and participate in meetings with consultants and contractors working on other parts of the Project that may affect, or be affected by, Engineer's services or resulting construction.
 5. Prepare and submit **monthly** engineering services progress reports to the Owner. Include summary of services performed in period, expected progress in next period, percent completion of current tasks, and a description of major issues or concerns.
 6. Special Invoicing: In addition to, or as a substitute for, Engineer's standard invoicing, provide the specified additional information or documentation, following the invoicing procedures indicated: **None**
 7. Conduct ongoing management tasks, including:
 - a. Maintaining communications records and files pertaining to or arising from Engineer's services;
 - b. With respect to Engineer's services and other directly relevant parts of the Project, prepare for and participate in periodic progress meetings with Owner to discuss progress, schedule, budget, issues, potential problems and their resolution; and
 - c. Preparing agendas prior to and minutes following all Engineer-led meetings.
- B. In all phases of Engineer's services, Engineer shall prepare draft and final Drawings in accordance with **Engineer's CAD standards**, using **AutoCAD Civil 3D version 2025 (DWG file version 2018)** software.

- C. The source documents for the draft and final Specifications in all phases of Engineer's services will be **Engineer's standard specifications**, unless otherwise mutually agreed upon by the parties.
- D. **In all phases of Engineer's services, Engineer is responsible for Domestic Preference compliance documentation for the project. This includes but is not limited to:**
 - 1. **Obtaining manufacturers' certifications for items specified by Engineer as sole source.**
 - 2. **Verifying and certifying Verifying and certifying that all items subject to Domestic Preference specified in the contract are available domestically or are covered by a waiver.**
 - 3. **Reviewing change order proposals, shop drawings, payment applications, proposed substitutes and "or-equals," and any other submittals to ensure Manufacturer Certifications are submitted for all items subject to Domestic Preference requirements.**
 - 4. **Ensuring that all Manufacturers' Certifications provided by the contractor comply with Domestic Preference requirements.**
 - 5. **Maintaining all Domestic Preference documentation throughout the project and providing Contractor's and Manufacturers' Certifications to Owner upon final completion of the Work. Provide a copy of the Contractor's Certification to Agency.**
 - 6. **Certifying, upon final completion of the Work, that the project complies with Domestic Preference requirements (signing EJCDC C-626 Notice of Acceptability of Work will suffice for this certification).**
- E. **In all phases Engineer's Services, Engineer is responsible for ensuring the project does not violate the prohibitions on telecommunication and video surveillance services and equipment under 2 CFR 200.216.**

1.02 Study and Report Phase – **DELETED - COMPLETED PREVIOUSLY IN 2024**

1.03 Preliminary Design Phase ~~Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered Preliminary Design Phase~~

- A. ~~After acceptance by Owner **and concurrency by Agency** of the Report and any other Study and Report Phase deliverables (if Engineer's services under this Agreement included Study and Report Phase services); selection by Owner of a recommended solution; issuance by Owner of any instructions for use of Project Strategies, Technologies, and Techniques, or for inclusion of sustainable features in the design, or enhanced resiliency of the design; indication by Owner of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document in writing any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from the selected solution, related Project Strategies,~~

~~Technologies, or Techniques, sustainable design and resiliency instructions, specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information. Any resulting changes to Engineer's scope of services will be subject to Agency concurrence.~~ The Study and Report Phase was considered completed and accepted by Owner and Agency's with the completion, submission, and agency approval of the 2019 Wastewater PER Amendment and 2024 Propose Montana Avenue Lift Station Improvements Project Supplemental Memorandum.

- B. Upon written authorization from Owner, Engineer shall:
1. Review and assess all available Project information and data, including any pertinent reports or studies (whether prepared by Engineer or others) and any related instructions from Owner.
 2. Based on the threshold review and assessment of available information and data, advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer any additional information and data, for Engineer's use in the preparation of a Preliminary Design Phase Report.
 3. Prepare a Preliminary Design Phase Report in the following format: **DEQ Circular DEQ-2 Design Standards for Public Sewage Systems Design Report (a.k.a. DEQ Design Report)**.
 4. The Preliminary Design Phase Report will consist of final design criteria, preliminary drawings, a preliminary list of expected specifications, and written descriptions of the Project. The Preliminary Design Phase Report will consider the following matters to the extent applicable to the Project and as necessary to establish the basis of design for proceeding to final design and construction:
 - a. The Project concept, intent, performance criteria, desired outcomes, Owner's standards and Owner directed improvements and facility elements as established in the Study and Report Phase and as expressly set forth in the Baseline Information section of this Exhibit A (collectively the "Project Goals").
 - b. Recommended appropriate design criteria for each primary portion and significant discipline of the design necessary to address the Project Goals.
 - c. Site conditions and characterization as known at the time of, or to be determined during, the Preliminary Design Phase, including topography; subsurface information; Constituents of Concern; cultural, historical, and archaeological resources at the Site; wetlands information; and evaluations of flora and fauna that may be affected by the Project.
 - d. The time schedule for completion of the Project in accordance with Project Goals, including any recommended changes to the time required to complete the Final Design Phase (as set forth in Exhibit B, Deliverables Schedule) and estimated schedule(s) for construction.
 - e. Identification of major items of materials and equipment, rationale for selection with consideration of quality, suitability, pricing, sourcing, regulatory, and bidding issues affecting recommended selection.
 - f. Revised opinions of probable Construction Cost.

- c. Use the Underground Facilities Procedure to aid in the performance of design services:
 - a. Account for Underground Facilities, based on available information, when advancing the design during the Preliminary Design Phase.
 - b. The Underground Facilities Procedure will include a plan to keep Underground Facilities information current as Engineer proceeds with the provision of design services, and to add new or relocated Underground Facilities information to the base utility or Site drawings.
 - c. To manage the potential impact of design changes on Underground Facilities, Engineer shall work together with Owner to modify or reapply the Underground Facilities Procedure as the design progresses and changes.

10. Mitigation of Utilities Conflicts

- a. Identify potential conflicts between the Project (including existing and new facilities and structures) and above-ground utilities and Underground Facilities as reviewed in Exhibit A Paragraphs 1.03.B.8 and 9 above, and advise Owner regarding the need for resolution of such conflicts with utility and Underground Facilities owners and permit agencies. Identify the potential need for the relocation of existing above-ground utilities and Underground Facilities.
- b. Update the Underground Facilities Procedure as necessary for any Underground Utilities conflicts and relocations.
- c. Working together with Owner, jointly identify which specific parties or other entities will be responsible for implementation of the various specific parts of the Underground Facilities Procedure (including those parts that address resolution of Underground Facilities conflicts), and for resolution of above-ground utilities conflicts. Such identification will take into account Owner's authority and standing, as owner of the Site, with respect to Underground Facilities and above-ground utilities.
 - a. To the extent that Owner and Engineer agree that in addition to performing the design-related obligations set forth in Exhibit A Paragraphs 1.03.B.8 and 9, Engineer will also implement any non-design part of the Underground Facilities Procedure (including resolution of Underground Facilities conflicts), or undertake resolution of above-ground utilities conflicts, such additional duties will be Additional Services under Article 2 of this Exhibit A.

11. Surveys, Topographic Mapping, and Utility Documentation

- a. ~~Coordinate with Owner's utility engineer, utility consultant, or land surveyor for the necessary field surveys, topographic mapping, and utility documentation required for Engineer's design purposes, or by the Underground Facilities Procedure. DELETE~~
- b. ~~If no scope of work and procedure for utility documentation has been established, selected, or authorized, then at a minimum Engineer will contact utility owners and obtain available information. Except as otherwise provided in this Agreement, Owner acknowledges that the information gathered from utility owners may be~~

~~incorrect, incomplete, outdated, or otherwise flawed, and as to Engineer, bidders, and Contractor, the Owner accepts all associated risks. Owner reserves all associated rights as to recourse against the sources of such flawed information and against third parties. DELETE~~

- c. **Legal and Topographic Survey. Perform a legal and topographic survey of the project area. Survey data will be used to prepare the digital Basemap for the project. Project area will include, at a minimum, the lift station vicinity, approximately 100 feet of the forcemain.**
 - d. **Incorporate utility documentation and field pick-ups into Basemap.**
12. Prepare initial draft of a comprehensive permit document that identifies Owner's permit duties, Engineer's permit duties, and Contractor's permit duties, and the schedule for permitting activities.
 13. Continue to assist Owner with Project Strategies, Technologies, and Techniques that Owner has chosen to implement in Exhibit A Paragraph 1.03.A.
 14. Obtain Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's Bidding/Proposal Documents and Front-End Construction Contract Documents. **Engineer must also incorporate all Agency regulations, forms, and design and construction standards applicable to the project in development of the documents indicated in this Article.**
 - a. Also obtain copies of Owner's standard Bidding/Proposal Documents and Front-End Construction Contract Documents (if other than the EJCDC 2018 Construction Series documents), and any other related documents or content for Engineer to include in drafts of the Project-specific Bidding/Proposal Documents and Front-End Construction Contract Documents, when applicable.
 - b. Review Owner's instructions regarding procurement, bidding and contracting of construction services with respect to effects on the Project design, schedule and construction and address as needed in the Preliminary Design Phase deliverables.
 15. Prepare the Preliminary Design Phase Report. This Report will consist of, as appropriate, separate or combined submittals in whole or summary, the Preliminary Design Phase documents listed in Exhibit A Paragraph 1.03.B.4, and Engineer's findings and recommendations for advancing the Project to the Final Design Phase (including Engineer's findings and recommendations, if any, regarding permitting, utilities, and Underground Facilities). The submittal will be in the format of a report, or otherwise organized and assembled for ease and practicality of use.
 - a. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and on the basis of information furnished by Owner, assist Owner in tabulating the various cost categories which comprise Total Project Costs.

- b. Engineer will meet with Owner to discuss the draft Preliminary Design Phase submittal and receive Owner's comments.
16. Perform or provide the following other Preliminary Design Phase tasks or deliverables:
- a. **Notify Owner of needed utility located for Owner's facilities including, but not limited to, underground water and sewer to facilitate survey and other investigations.**
 - b. **Geotechnical Investigation & Report.**
 - a) **Perform one bore hole at a planned depth 20 to 30 feet at the proposed lift station site. During drilling and excavation, the subsurface profile will be observed and logged by an experienced geotechnical engineer. Samples will be collected as augering proceeds. Borings will be backfilled with available cuttings generated during drilling and any asphalt pavement disturbed will be patched. Excess cutting will be removed and disposed of off-site. A geotechnical engineer shall observe and log the subsurface profile during drilling and excavating. Samples will be collected as augering proceeds.**
 - (1) **Prior to field investigation, Engineer will call in the required One Call Utility locates. Engineer will relay on others to locate any private utilities or services which are not marked by standard locate.**
 - (2) **Field scope of work does not include determining the presence or absence of subsurface soil and groundwater contamination. However, if contamination is suspected during fieldwork operations, the Owner will be notified immediately.**
 - b) **Analyze samples to determine appropriate physical and engineering properties. Samples from the geotechnical investigation will be stored for a period of one month following submission of the completed geotechnical report at which time they will be discarded unless prior arrangements have been made for sample storage. Laboratory program includes:**
 - (1) **Visual identification and moisture content**
 - (2) **Sieve analysis (gradation)**
 - (3) **Atterberg limits**
 - (4) **1-D Consolidation/swell**
 - (5) **Unconfined Compression**
 - (6) **These tests are based on our assumptions for site geology and may be modified on actual field conditions. If site conditions appear to warrant additional work or testing, the Engineer shall notify the Owner request authorization for an Amendment for the additional or revised work.**

- c) **Analyze field data and laboratory test results to determine soil properties and provide engineering recommendations for the project. Recommendations are anticipated to include design bearing pressures for the lift station structures as well as general guidance regarding backfill and compaction as well as possible dewatering requirements. The results of the field and laboratory studies and engineering analysis, along with our recommendation, will be summarized in a Geotechnical Engineering Memorandum. The Memorandum will include copies of boring logs, laboratory test reports and site plan showing location of bore pit.**
- 17. Furnish the Preliminary Design Phase Report, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner pursuant to the requirements of the Deliverables Schedule in Exhibit B, and review the deliverables with Owner.
- 18. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.
- C. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Preliminary Design Phase Report (as revised) and associated documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

1.04 Final Design Phase

- A. After acceptance by Owner of the Preliminary Design Phase Report and any other Preliminary Design Phase deliverables; issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner; and any necessary changes, refinements, and supplementation of the Baseline Information set forth at the beginning of this Exhibit A, Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services, compensation (through application of the provisions regarding Additional Services, or otherwise), and the time for completion of Engineer's services, resulting from specific modifications to the Project, or changes, refinements, or supplementation of the Baseline Information.
 - 1. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is **one**. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.
 - 2. If more than one prime construction contract is to be awarded for the Work designed or specified by Engineer, then Owner shall define and set forth (in an exhibit to this Agreement, or in a subsequent document) the duties, responsibilities, and limitations of authority of a person or entity that will have authority and responsibility for coordinating the activities among the various prime Contractors, and any resulting changes in the duties, responsibilities, and authority of Engineer.
 - 3. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime construction contract, or if Engineer's services

are to be separately sequenced with the work of one or more separate design professional consultants or prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding/Proposal, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable under such separate prime construction contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such construction contracts is to proceed concurrently.

- B. Upon written authorization from Owner, Engineer shall prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor, in accordance with the Preliminary Design Phase Report (as revised) and other Preliminary Design Phase deliverables. As part of the preparation of the Drawings and Specifications, Engineer shall prepare interim drafts and final Drawings and Specifications as follows, pursuant to the Deliverables Schedule in Exhibit B:
1. First Final Design Phase draft of all Drawings and Specifications.
 2. Second Final Design Phase draft of all Drawings and Specifications, addressing Owner comments and including appropriate design advancement.
 3. Final Drawings and Specifications that address Owner **and Agency** comments; complete the design; are suitable for estimating and pricing by prospective Contractors; and are complete and ready for construction.
- C. In preparing the Specifications (and any bidding, contract, or other documents that are part of Engineer's scope of services), Engineer shall obtain from Owner or Owner's legal counsel **and Agency** any relevant constraints such as requirements for use of domestic steel and iron, other domestic purchasing requirements, statutory restrictions on utilizing proprietary specifying methods, and the like, and comply with or account for such constraints in drafting Specifications, Bidding/Proposal Documents, and other Project documents.
- D. Engineer shall prepare or assemble draft Bidding/Proposal Documents and Front-End Construction Contract Documents as follows:
1. Such documents will be based on the 2018 EJCDC Construction Documents, and on the specific bidding or Contractor selection-related instructions and forms, contract forms, text, or other content received from Owner.
 2. When Engineer is required to use other than the 2018 EJCDC Construction Documents, then as required in the Preliminary Design Phase Owner will furnish to Engineer a copy of the required documents to be used for the Project's Bidding/Proposal Documents and Front-End Construction Contract Documents. Prior to the first Final Design Phase submittal, Engineer will review the bidding and contracting documents furnished by Owner and provide comments to Owner. Engineer will meet with Owner to discuss Engineer's comments. Owner will consider Engineer's recommendations to revise Owner's documents for the Project.
 3. Engineer will furnish to Owner, for review by Owner's legal counsel, the draft Bidding/Proposal Documents and Front-End Construction Contract Documents. Owner

and Owner's legal counsel must transmit to Engineer, in a timely manner, one coordinated set of comments and revisions to the draft documents.

4. **Engineer will furnish to Agency the draft Bidding/Proposal Documents and Front-End Construction Contract Documents for review and concurrence.**
- E. During the Final Design Phase the Engineer shall continue to account for above-ground utilities and Underground Facilities as the design advances and is finalized. This may include:
1. performing the services assigned to Engineer under the Underground Facilities Procedure described in Exhibit A Paragraph 1.03 above, including but not limited to the design-related tasks in Exhibit A Paragraph 1.03.B.9.
 2. addressing required and proposed activities or mitigations identified in the analysis of utilities and by the Underground Facilities Procedure as having an impact on the final design, and considering such in preparing the Drawings and Specifications.
- F. Engineer shall perform or furnish the following other Final Design Phase services:
1. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 2. Assist with or prepare applications for permits and approvals, as follows:
 - a. Update comprehensive permit document created in Preliminary Design Phase for Final Design detail.
 - b. Prepare the following applications for Owner's submittal to authorities having jurisdiction over the construction or operation of the Project:
 - a. **Montana Department of Environmental Quality Public Water/Wastewater Infrastructure Engineering Review Submittal**
 - c. Confer with Owner regarding revisions, if any, to the application(s), and make appropriate revisions to the application(s) for Owner's resubmittal to the authority having jurisdiction.
 - d. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of the authorities having jurisdiction listed above, including applications for review or approval of the final design.
 - e. Identify and indicate in the Construction Contract Documents the permits and approvals for which Contractor will be responsible, including work permits, building permits, and other permits and approvals that will be Contractor's responsibility; and, in addition, indicate those permits initially obtained by Owner for which Contractor will be a co-permittee, together with associated requirements.
 - f. Unless expressly indicated otherwise, Engineer's scope and budget includes attending one meeting or conference call with each permit and approval-issuing agency to discuss the Project and receive the agency's comments on the application.
 - g. Engineer does not guarantee issuance of any required permit or approval.
 - h. Fees charged by authorities having jurisdiction for such permits or approvals are the responsibility of Owner.

Exhibit A—Engineer's Services.

Exhibits to EJCDC® E-500, Agreement between Owner and Engineer for Professional Services.
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3. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost. Furnish to Owner an updated opinion of probable Construction Cost with the interim and final deliverables of the Drawings and Specifications.
 4. After consultation with Owner, include in the Front-End Construction Contract Documents any Electronic Document Protocol addressing specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website.
 5. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.
 6. Review the preliminary schedule for the Construction Phase and advise Owner when initial understanding of the Construction Contract Times must or should be revised, and furnish Owner with recommendations on revisions to the proposed Construction Contract Times.
 7. Engineer's project manager and other appropriate staff will participate in the following meetings and conference calls:
 - a. First draft design review meeting ~~at Owner's office.~~
 - b. Second draft design review meeting ~~at Owner's office.~~
 - c. **Owner may request additional meetings which shall be considered an Additional Service and addressed in accordance with Exhibit A, Part 2.02.A.34.**
 - d. Engineer will prepare and distribute minutes of each such meeting and conference call, indicating attendees, topics discussed, decisions made, and action items for follow-up.
 8. Perform or provide the following other Final Design Phase activities or deliverables:
 - a. **Prepare ROW/Property Ownership Map and documentation for reference by Attorney to publish Site Title Opinion and Opinion of Counsel required by Agencies.**
- G. Engineer shall complete the Final Design Phase as follows:
1. Pursuant to the requirements of the Deliverables Schedule in Exhibit B, furnish for review by Owner, its legal counsel, and other advisors, the final Drawings and Specifications (as set forth in Exhibit A Paragraph 1.04.B.3 above); assembled drafts of other Construction Contract Documents including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost; and any other Final Design Phase deliverables, and review the deliverables with Owner. **The Engineer shall identify the building codes and accessibility standards used in the design and indicate them on the drawings and specifications and certify that the final drawings and specifications comply with those standards.**
 2. Revise the final Design Phase deliverables in response to Owner's comments, as appropriate, and submit revised deliverables pursuant to the Deliverables Schedule.

3. **Provide the Owner and Agency with a written certification that the final Drawings and Specifications, other assembled construction Contract Documents, bidding related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables comply with all requirements of Agency.**
4. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications; assembled drafts of the Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; and any other Final Design Phase deliverables, as revised **and all final design phase deliverable have been accepted by the Owner.**

1.05 Bidding/Proposal Phase

- A. After acceptance by Owner **and Agency** of the final Drawings and Specifications; assembled drafts of other Construction Contract Documents, including the draft Front-End Construction Contract Documents; the draft Bidding/Proposal Documents; the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and any other Final Design Phase deliverables, and upon written authorization by Owner to proceed, Engineer shall:
 1. Assist Owner in advertising for and obtaining bids or proposals for the Work; assist Owner in issuing assembled Bidding/Proposal Documents and proposed Construction Contract Documents to prospective contractors; if applicable, maintain a record of prospective contractors to which documents have been issued; attend pre-bid conferences, if any; and receive and process contractor deposits or charges, if any, for the issued documents.
 - a. **The documents will be distributed through the Montana Builders Exchanges.**
 2. Prepare and issue addenda as appropriate to clarify, correct, or change the issued documents. **Obtain Agency concurrence on any Addenda that modify the Bidding Documents. Obtain prior concurrence when possible.**
 3. **Evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors prior to award of contracts for the Work. Issue a bid addendum for any and all approved "or equals" and substituted. Review of substitutes and "or equals" will be in accordance with the General Conditions of the Construction Contract and applicable Agency requirements. Services under this paragraph this paragraph are subject to the provisions of Exhibit A Paragraph A2.01.A2**
 4. Attend the bid opening; prepare bid tabulation sheets; and assist Owner in evaluating bids or proposals, assembling final Construction Contracts for the Work for execution by Owner and Contractor, and in preparing notices of award to be issued by Owner for such contracts.
 5. Provide information or assistance needed by Owner in the course of any review of bids, proposals, or negotiations with prospective contractors.
 6. Consult with Owner as to the qualifications of prospective contractors.

7. Consult with Owner as to the qualifications of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
9. Perform or provide the following other Bidding/Proposal Phase tasks or deliverables:
 - a. **Upon award of the Construction Contract, the Engineer shall furnish to Owner ~~five~~ one electronic copy of the executed copies of the signed Contract Documents including Drawings and Specifications.**
10. The Bidding/Proposal Phase will be considered complete upon award of Construction Contracts for the Work and commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

1.06 Construction Phase

- A. After completion of the Final Design Phase and concurrent with the Bidding/Proposal Phase, and after issuance by Owner of any instructions for specific modifications or changes in the scope, extent, character, design, schedule, number of prime construction contracts, and other construction requirements of the Project during the Construction Phase desired by Owner, the Engineer and Owner shall discuss, resolve, and document any necessary revisions to Engineer's scope of services or compensation (through application of the provisions regarding Additional Services, or otherwise), or the time for completion of Engineer's services, resulting from specific modifications to the Project.
 1. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified. With the exception of such expressly required services, Engineer shall have no design, Submittal (including Shop Drawing) review, or other obligations during construction, and Owner assumes all responsibility for providing or arranging for all other necessary Construction Phase administrative, engineering, and professional services.
 2. Owner waives all claims against Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A. Notwithstanding the foregoing waiver, Engineer shall be responsible for any professional opinions and interpretations provided by Engineer to Owner during the Construction Phase or Post-Construction Phase, including interpretations or clarifications of the Construction Contract Documents.
- B. Upon successful completion of the Bidding/Proposal Phase, and upon written authorization from Owner, Engineer shall provide the following services:
 1. General Administration of Construction Contract: Consult with Owner and act as Owner's representative as provided in this Agreement and the Construction Contract. Unless otherwise set forth in the scope of Basic Services (as duly modified), the extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract

(2018) or other construction general conditions specified in this Agreement. Except as otherwise provided in the Construction Contract, Owner's communications to Contractor will be issued through Engineer.

- a. If the responsibilities of Engineer as set forth in the Construction Contract are greater than those Construction Phase services expressly required of Engineer in Exhibit A Paragraph 1.06, as duly modified, then Owner shall either (1) expand the scope of the Construction Phase services to match those of the Construction Contract, and compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services, or (2) identify a qualified individual or entity (other than Engineer) responsible for the additional responsibilities in the Construction Contract.
 - b. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, or if Owner requires Engineer's services for construction that extends longer than the anticipated Construction Contract Times, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services, pursuant to the provisions for compensating Additional Services.
 - c. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional.
2. Field Office: **DELETED**
 3. Resident Project Representative (RPR): Provide the services of an RPR at the Site to assist Engineer and to provide more extensive observation of Contractor's Work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 4. ~~Selection of Independent Testing Laboratory: Assist Owner in the selection of an independent testing laboratory to perform required testing services.~~ **DELETE**
 5. Pre-Construction Conference: Participate **and chair** in a pre-construction conference prior to commencement of Work at the Site; prepare and distribute agenda for the conference and prepare and distribute minutes of such conference.
 6. Electronic Transmittal Protocols: If the Construction Contract does not establish protocols for transmittal of Electronic Documents by Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
 7. Original Documents: ~~If requested by Owner to do so,~~ **Maintain** and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

8. Schedules: Receive, review, and, and, subject to the criteria of the Construction Contract, determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the progress schedule, schedule of submittals, and schedule of values. Advise Contractor in writing of Engineer's comments or acceptance of schedules.
 - a. Schedules will be acceptable to Engineer as to form and substance:
 - a. Progress Schedule: if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - b. Contractor's Schedule of Submittals: if it provides a workable arrangement for reviewing and processing the required Submittals.
 - c. Contractor's Schedule of Values: if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
9. Baselines and Benchmarks: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
10. Permits: Provide Owner with copies of technical information and supporting data previously obtained or developed by Engineer for Owner's use, or for Owner to provide to Contractor, in obtaining required permits and licenses delegated to Contractor by Owner.
11. Visits to Site and Observation of Construction: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at **intervals appropriate to the various stages of the Work, and Engineer deems necessary**, to observe as an experienced and qualified design professional, the progress of Contractor's executed Work. Such visits and observations by Engineer, including its RPR, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by its RPR, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work. Engineer will make a report of Engineer's visit, summarizing Engineer's general observations and any significant findings.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to by this Agreement and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of

Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer will not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor will Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- c. **These site visits must be at least monthly and the Engineer must document all visits to the project with copies furnished to the Owner and Agency.**
12. Defective Work: If, on the basis of Engineer's observations or as indicated in documentation available to Engineer, Engineer believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, Engineer will promptly issue written notice to Contractor (with copy to Owner) of such defective Work. Such notice will communicate the scope, extent (to Engineer's understanding) of defect, and associated provisions of the Construction Contract Documents.
 - a. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting the defective Work in accordance with the provisions of the Construction Contract Documents. Engineer shall give notice to Contractor regarding whether the defective Work should be repaired, replaced, or will be accepted by Owner.
 - b. However, Engineer's authority to provide this information to Owner or Engineer's decision to exercise or not exercise such authority will not give rise to a duty or responsibility of the Engineer to Contractors, Subcontractors, material and equipment suppliers, their agents or employees, or any other person(s) or entities performing any of the Work, including but not limited to any duty or responsibility for Contractors' or Subcontractors' safety precautions and programs incident to the Work.
 13. Compatibility with Design Concept: If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
 14. Clarifications and Interpretations: Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract

Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.

15. Non-reviewable Matters: If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (a) the performance or acceptability of the Work under the Construction Contract Documents, (b) the design (as set forth in the Drawings, Specifications, or otherwise), or (c) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
16. Field Orders: Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
17. Change Orders and Work Change Directives: Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
18. Change Proposals and Claims
 - a. Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal.
 - b. Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
19. Differing Site Conditions: Respond to any notice from Contractor of differing site conditions, including conditions relating to Underground Facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use subject to limitations of Engineer's obligations under this Agreement.
20. Contractor's Submittals: Review and approve or take other appropriate action with respect to required Contractor Submittals, but only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Construction Contract Documents, and for compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's Submittal schedule that Engineer has accepted.

21. Substitutes and “Or-equals”: Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor, but subject to the provisions of Exhibit A Paragraph 2.01.A.2.
22. Inspections and Tests
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer’s review of such certificates will be for the purpose of determining whether the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. Reply to Contractor requests for written concurrence that specific portions of the Work that are to be inspected, tested, or approved may be covered.
 - c. Issue written requests to Contractor that specific portions of the Work remain uncovered.
 - d. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - e. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
23. Contractor’s Applications for Payment: Based on Engineer’s observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set offs) based on the provisions for set offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer’s representation to Owner, based on such observations and review, that, within the limits of Engineer’s knowledge, information and belief, Contractor’s Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor’s being entitled to such payment appear to have been fulfilled in so far as it is Engineer’s responsibility to observe the Work. In the case of unit price Work, Engineer’s recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).
 - b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor’s Work as it is performed and furnished have been exhaustive,

extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid. **By signing payment application and recommending payment, Engineer is certifying to the best of their knowledge that all items submitted for payment comply with Domestic Preference requirements.**

24. Contractor's Completion Documents: Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Exhibit A Paragraph 1.06.B.20. ~~Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents will be to check that Contractor has submitted a complete set of those documents that Contractor is required to submit.~~ **Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings and furnish such Record Drawings to Owner.**
25. Substantial Completion: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, visit the Site in company with Owner and Contractor to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
26. Other Tasks: Perform or provide the following other Construction Phase tasks or deliverables:
 - a. **Provide the Owner and Agency with a written certification that the project complies with Domestic Preference requirements, to the best of Engineer's knowledge.**

- b. **Verify and document Contractor implemented environmental mitigation requirements. Provide documentation to Owner and Agency.**

27. Completion and Acceptability of the Work: After notice from Contractor that the Work is complete:

- a. visit the Site with Owner and Contractor to determine if the Work is in fact complete and acceptable;
- b. notify Contractor of any part of the Work that is found during the visit to be incomplete or defective, and subsequently confirm that Contractor has corrected any such deficiencies;
- c. follow the procedures in the Construction Contract regarding review and response to Contractor's application for final payment and accompanying documentation; and
- d. if Engineer is satisfied that the Work is complete and acceptable, provide a notice to Owner and Contractor using EJCDC® C-626, Notice of Acceptability of Work (attached as Exhibit E), stating that the Work is acceptable (subject to the provisions of the Notice and this Exhibit A) within the limits of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement. **Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Agency.**

28. Standards for Certain Construction-Phase Decisions: Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

C. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractor. If the Project involves more than one prime contract as indicated in Exhibit A Paragraph 1.04.A.1, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

1.07 Post-Construction Phase

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - 1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in

consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.

2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
 3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. **Assist with Agency close-out or warranty period documentation.**
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate 12 months after the commencement of the Construction Contract's correction period.

ARTICLE 2—ADDITIONAL SERVICES

2.01 Additional Services Not Requiring Owner's Written Authorization

- A. Engineer shall advise Owner that Engineer is commencing to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice to cease from Owner. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.
1. Substantive design and other technical services in connection with Work Change Directives, Change Proposals, and Change Orders to reflect changes requested by Owner.
 2. Services essential to the orderly progress of the Bidding/Proposal and Construction Phases and not wholly quantifiable prior to those Phases or otherwise dependent on the actions of prospective individual bidders or contractors and including:
 - a. making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items;
 - b. **DELETED**
 - c. evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract; and
 - d. providing to the Contractor or Owner additional or new information not previously prepared or developed by the Engineer for their use in applying for or obtaining required permits and licenses, in responding to agency comments on such applications, or in the administration of any such permits or licenses.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or

acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.

5. Implement coordination of Engineer's services with other parts of the Project that are not planned or designed by Engineer or its Subconsultants, unless Owner furnished to Engineer substantive information about such other parts of the Project prior to the parties' entry into this Agreement, in the Baseline Information section of this Exhibit A, or otherwise in Exhibit A; if such substantive information has been so provided, coordination of Engineer's services will be part of Basic Services.
6. Implement the specific parts of an Underground Facilities Procedure that are assigned to Engineer, or above-ground utilities tasks that are assigned to Engineer as the Project progresses (but not including the design-related services already assigned to Engineer as a Basic Service).
7. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
8. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
9. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.
11. To the extent the Project is subject to Laws and Regulations governing public or government records disclosure or non-disclosure, Engineer will comply with provisions applicable to Engineer, and Owner will compensate Engineer as Additional Services for Engineer's costs to comply with any disclosure or non-disclosure obligations beyond those identified in the Basic Services.
12. Services directly attributable to changes in Engineer's Electronic Documents obligations after the effective date of the Agreement.
13. **Miscellaneous correspondence, coordination and start up document preparation associated with MCEP and RRG grants.**
14. **Provide grant administration professional services for governmental grants, loans or advances in connection with the Project. Services are limited to the following programs: MCEP and RRG. Prepare, submit, and distribute funding draw requests based on invoicing/receipts received from the Owner and Contractor. Organize and facilitate regular funding agency conference calls. Assist the Owner with status updates or reports for the agencies. Provide other grant administration assistance as required by Owner and Agencies.**

2.02 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner **and approved by Agency**, Engineer shall provide Additional Services of the types listed below. These services are not included as part of Basic Services and will be paid for by Owner as indicated in Exhibit J.
1. Obtain or provide specified additional Project-related information and data to enable Engineer to complete its Basic and Additional Services.
 2. Preparation of special and customized reporting, invoicing, and related support documentation in addition to that identified to be provided under Basic Services.
 3. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements (**not including preparation of the environmental documentation required by 7 CFR part 1970**); review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 4. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 5. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 6. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Exhibit A Paragraph 1.02.A.1, **but only if the Owner's request is made after completion of the Study and Report Phase**.
 7. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 8. Providing renderings or models for Owner's use, including development, management, and other services in support of building information modeling or civil integrated management.
 9. Undertaking investigations and studies including, but not limited to:
 - a. All-hazards risk assessments and other studies to evaluate the feasibility of enhancing the resiliency of the design;
 - b. detailed consideration of operations, maintenance, and overhead expenses;
 - c. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues)

- and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
- d. preparation of appraisals;
 - e. with respect to proprietary systems or processes requiring licensing, providing services necessary to assist Owner in obtaining such licensing.
 - f. detailed quantity surveys of materials, equipment, and labor; and
 - g. audits or inventories required in connection with construction performed or furnished by Owner.
10. Furnishing services of Subconsultants or Engineer's Subcontractors for other than Basic Services.
 11. Providing data or services of the types described in Article 2, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
 12. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Exhibit A Paragraph 1.04.A.1.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
 13. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Article 1 of Exhibit A).
 14. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
 15. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents); preparing pre-qualification procedures and documents, and participating in pre-qualifying prospective Bidders; and preparing Construction Contract Documents for alternate bids.
 16. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
 17. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all addenda and any amendments negotiated by Owner and Contractor.
 18. Services to assist Owner in developing or modifying protocols for transmittal of Electronic Documents by Electronic Means after the effective date of this Agreement, either by revising or adapting Exhibit F to the Project or implementing other Electronic Documents protocols among Project participants.

Exhibit A—Engineer's Services.

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19. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under Exhibit F Paragraph 1.01.D (see Exhibit F, Electronic Documents Protocol), or any other distribution of a Document to a third party. Such services may include but are not limited to preparing the data contained in the requested Document in a manner deemed appropriate by Engineer; creating or otherwise preparing and distributing the Document in a format necessary to respond to Owner's direction or decision to provide the Document to a requesting party, including Contractor, in a format other than that required for deliverables from Engineer to Owner; and services in connection with obtaining required releases from the third parties to which the Documents will be distributed. Compensation for these Additional Services is not contingent upon Owner's reimbursement from the requesting party.
20. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
21. **DELETED**
22. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
23. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
24. Preparation of operation, maintenance, and staffing manuals.
25. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
26. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
27. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
28. Preparing to serve or serving as a consultant or witness for, or producing documents for or on behalf of, Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project (but not including disputes between Owner and Engineer).
29. Overtime work requiring higher than regular rates.
30. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Exhibit A Paragraph 1.06.B.9; any type of property surveys or related engineering services needed for the transfer of interests in real property; providing construction and property surveys to replace reference points or property monuments lost or destroyed during construction; and providing other special field surveys.

31. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
32. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
33. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
34. **Meetings to supplement those identified in Basic Services will be compensated by an Amendment in accordance with Article 8.02 regardless of which party, agency, or entity initiates the request. Engineering fees shall be reimbursed for labor and expenses required to prepare, coordinate, schedule, travel, attend, facilitate, summarize, and prepare minutes for each additional meeting. Conference calls not requiring travel from Engineer's Office are not considered additional meetings.**
35. **Quality Assurance Construction Material Testing. Provide Owner's quality assurance construction materials testing includes field density testing. Fee includes up to 5 half day site visits with reimbursement including labor and expenses such as mileage and testing equipment fees. Additional testing may be negotiated and compensated in accordance with Article A2.02 Additional Services Requiring Owner's Written Authorization.**
36. **Grant Administration. Provide ongoing technical assistance related to the Owner's project funding including governmental grants: RRG & MCEP Grant Assistance may include preparing documents, attending or participating in conference calls/meetings, or assisting with progress reports.**

EXHIBIT B—DELIVERABLES SCHEDULE

Paragraphs 2.04.E, 3.02.A, and Exhibit A of the Agreement are supplemented by the following paragraph and table.

Engineer shall furnish Documents to Owner as required in Column 2 of the following table (and as further described in Exhibit A), according to the schedule in Column 4. Owner shall comment or take other identified actions with respect to the Documents as indicated in Column 2 (and as further described in Exhibit A), according to the schedule in Column 4.

Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [2] review copies of the Report and other Study and Report Phase deliverables to Owner.	1.02.A.17	Within [60] days of the Effective Date.
Owner	Submit comments regarding the Report and other Study and Report Phase deliverables to Engineer.	1.02.A.18	Within [14] days of the receipt from Engineer of the Report and other Study and Report Phase deliverables.
Engineer	Submit [2] copies of the revised Report and other Study and Report Phase deliverables to Owner.	1.02.A.18	Within [30] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Submit [1] electronic review copy of the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.17	Within [90] days of Owner's authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	1.03.B.18	Within [14] days of the receipt from Engineer of Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit [1] electronic copy of the revised Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	1.03.B.18	Within [30] days of the receipt of Owner's comments regarding the Preliminary Design Report, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Submit [1] electronic copy of the first Final Design Phase draft of Drawings and Specifications to Owner.	1.04.B.1	Within [45] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the first Final Design Phase draft of Drawings and Specifications to Engineer.	1.04.B.1	Within [14] days of the receipt of the first final Design Phase drafts of Drawings and Specifications from Engineer.

Exhibit B—Deliverables Schedule.

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Party	Action	Exhibit A Reference	Schedule
Engineer	Submit [1] electronic copy of the second Final Design Phase drafts of Drawings and Specifications to Owner.	1.04.B.2	Within [30] days of the receipt of Owner's comments and instructions regarding the first Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit [1] electronic copy of draft Bidding/Proposal and Front-End Construction Contract Documents, as required, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Owner.	1.04.D.3; 1.04.F.8	Concurrent with submittal to Owner of the second Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications to Engineer.	1.04.B.2	Within [14] days of the receipt from Engineer of the second Final Design Phase drafts of Drawings and Specifications.
Engineer	Submit [1] electronic copy of the final, completed, pricing-ready and construction-ready Drawings and Specifications to Owner.	1.04.B.3 and 1.04.G.1	Within [30] days of the receipt of Owner's comments and instructions regarding the second Final Design Phase drafts of Drawings and Specifications.
Owner	Submit comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications to Engineer.	1.04.G.2	Within [14] days of the receipt from Engineer of the final, completed, pricing-ready and construction-ready Drawings and Specifications.
Owner	Submit comments and instructions regarding drafts of Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables (other than Drawings and Specifications) to Engineer.	1.04.D.3; 1.04.F.8	Concurrent with Owner's submittal of comments and instructions regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications.

Exhibit B—Deliverables Schedule.

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Party	Action	Exhibit A Reference	Schedule
Engineer	Submit to Owner: [1] electronic copy of the revised final, completed, pricing-ready and construction-ready Drawings and Specifications; and [1] electronic copy of assembled Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.	1.04.G.2 1.04.G.3	Within [30] days of receipt of Owner’s final comments and instructions regarding the regarding the final, completed, pricing-ready and construction-ready Drawings and Specifications, the Bidding/Proposal and Front-End Construction Contract Documents, and any other Final Design Phase deliverables.
Engineer	Submit [1] electronic copy of Bidding/Proposal Phase deliverables (if any) to Owner.	1.05.A	Within [30] days of written authorization by Owner to proceed with Bidding/Proposal Phase services.
Engineer	Submit [1] electronic copy of Construction Phase deliverables (if any) identified in Exhibit A Paragraph 1.06.B.26.a to Owner.	1.06.B.26.a	Within [14] days of Substantial Completion being approved by the Engineer.
Engineer	Submit [1] electronic copy of Post-Construction Phase deliverables (if any) identified in Exhibit A Paragraph 1.07.A.3.a to Owner.	1.07.A.3.a	Within [60] days of Substantial Completion.

Exhibit B—Deliverables Schedule.

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EXHIBIT C—AMENDMENT TO OWNER-ENGINEER AGREEMENT

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. **[Enter Amendment Number]**

Owner: **[Name of Owner]**

Engineer: **[Name of Engineer]**

Project: **[Name of Project]**

Effective Date of Owner-Engineer Agreement: **[Effective Date of Agreement]**

Nature of Amendment: (Check those that apply)

- Additional Services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications of payment to Engineer
- Modifications to time(s) for rendering services
- Modifications to other terms and conditions of the Agreement

Description of Modifications:

[Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary. Include cost breakdown and documentation, if applicable.]

Agreement Summary:

Original agreement amount: \$

Net change for prior amendments: \$

This amendment amount: \$

Adjusted Agreement amount: \$

Change in time for services (days or date, as applicable):

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. The Effective Date of the Amendment is **[Enter Effective Date of Amendment]**.

Owner

Engineer

(typed or printed name of organization)

(typed or printed name of organization)

By: _____
(individual's signature)

By: _____
(individual's signature)

(Attach evidence of authority to sign.)

(Attach evidence of authority to sign.)

Date: _____
(date signed)

Date: _____
(date signed)

Name: _____
(typed or printed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Title: _____
(typed or printed)

EXHIBIT D—DUTIES, RESPONSIBILITIES, AND LIMITATIONS OF AUTHORITY OF RESIDENT PROJECT REPRESENTATIVE

ARTICLE 1—RESIDENT PROJECT REPRESENTATIVE SERVICES

Article 1 of the Agreement, Services of Engineer, and Exhibit A, Engineer's Services, are supplemented to include Exhibit D Paragraphs 1.01, 1.02, and 1.03, as follows:

1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to observe progress and quality of the Work. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. The RPR will **be on-site during installation of underground utilities and lift station structures.**
- C. Subject to the scope of RPR's observations of the Work, which may include field checks of materials and installed equipment, Engineer shall endeavor to identify defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, inspect, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A Paragraph 1.06 are applicable.

1.02 Duties and Responsibilities of RPR

- A. The duties and responsibilities of the RPR are as follows:
 1. General: RPR's dealings in matters pertaining to the Work in general will be with Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. Conferences and Meetings: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but not including Contractor's safety meetings), and as appropriate prepare and circulate copies of minutes thereof.

4. Safety Compliance: Comply with Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. Liaison
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. Clarifications and Interpretations: Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. Shop Drawings, Samples, and other Submittals
 - a. Receive Samples that are furnished at the Site by Contractor.
 - b. Receive Contractor-approved Shop Drawings.
 - c. Receive other Submittals from Contractor.
 - d. Record date of receipt of Samples, Contractor-approved Shop Drawings, and other Submittals.
 - e. Notify Engineer of availability of Samples for examination, and forward Contractor-approved Shop Drawings and other Submittals to Engineer. When appropriate recommend distribution of Submittal to specified Subconsultants.
 - f. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. Proposed Modifications: Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. Review of Work; Defective Work
 - a. Report to Engineer whenever RPR believes that any part of the Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected,

removed and replaced, or accepted as provided in the Construction Contract Documents. **Installation of items that do not comply with Domestic Preference requirements is considered defective Work.**

- b. Inform Engineer of any Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work.
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval.

10. Inspections, Tests, and System Start-ups

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public or other agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Work, record the results of these inspections, and report to Engineer.
- f. Nothing in this Agreement will be construed to require RPR to conduct inspections.

11. Records

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Proposals, Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, approved Shop Drawing and Sample submittals, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Proposals, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, **observations on Domestic Preference and environmental mitigation compliance**, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Photograph or video Work in progress or Site conditions.

- d. Record and maintain accurate, up-to-date lists of the company names and points of contact for Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - e. Maintain records for use in preparing Project documentation.
 - f. Upon completion of the Work, furnish original set of all RPR Project documentation to designated recipients.
12. Reports
- a. Furnish periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. **DELETED**
 - c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
 - d. Immediately inform appropriate parties of the occurrence of any Site accidents, emergencies, natural catastrophes endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of any potential differing site condition or Constituent of Concern.
13. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
14. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
15. Completion
- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the determination of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
 - b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to determine completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
 - c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).
16. **Domestic Preference**

- a. **Observe and report on compliance with Domestic Preference requirements including but not limited to: Verifying that items delivered to the site are accompanied by Domestic Preference documentation, as applicable, and photographing stored and installed items to document compliance.**

1.03 Limitations of Authority

- A. Resident Project Representative shall not:
 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
 3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
 5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Owner to occupy the Project in whole or in part.

NOTICE OF ACCEPTABILITY OF WORK (EJCDC® C-626 2018)

Owner: _____ Owner's Project No.: _____
Engineer: _____ Engineer's Project No.: _____
Contractor: _____ Contractor's Project No.: _____
Project: _____
Contract Name: _____
Notice Date: _____ Effective Date of the Construction Contract: _____

The Engineer hereby gives notice to the Owner and Contractor that Engineer recommends final payment to Contractor, and that the Work furnished and performed by Contractor under the Construction Contract is acceptable, expressly subject to the provisions of the Construction Contract's Contract Documents ("Contract Documents") and of the Agreement between Owner and Engineer for Professional Services dated **[date of professional services agreement]** ("Owner Engineer Agreement"). This Notice of Acceptability of Work (Notice) is made expressly subject to the following terms and conditions to which all who receive and rely on said Notice agree:

1. This Notice has been prepared with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the Engineer's professional opinion.
3. This Notice has been prepared to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor's Work) under the Owner Engineer Agreement, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Owner Engineer Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents, or to otherwise comply with the Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

Engineer

By (signature): _____
Name (printed): _____
Title: _____

EXHIBIT F—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

ARTICLE 1—ELECTRONIC DOCUMENTS PROTOCOL (EDP)

Paragraph 6.03 of the Agreement is supplemented by the following Exhibit F Paragraph 1.01 and Exhibit F—Attachment 1: Software Requirements for Electronic Document Exchange:

1.01 Electronic Documents Protocol

A. Electronic Transmittals: The parties shall conform to the following provisions together referred to as the Electronic Documents Protocol ("EDP" or "Protocol") for exchange of electronic transmittals.

1. Basic Requirements

- a. To the fullest extent practical, the parties agree to and will transmit and accept Electronic Documents by Electronic Means using the procedures described in this Protocol. Use of the Electronic Documents and any information contained therein is subject to the requirements of this Protocol and other provisions of the Agreement.
- b. The contents of the information in any Electronic Document will be the responsibility of the transmitting party.
- c. Electronic Documents as exchanged by this Protocol may be used in the same manner as the printed versions of the same documents that are exchanged using non-electronic format and methods, subject to the same governing requirements, limitations, and restrictions, set forth in the Agreement.
- d. Except as otherwise explicitly stated herein, the terms of this Protocol will be incorporated into any other agreement or subcontract between the Owner and Engineer and any third party for any portion of the Project, or any Project-related services, where that third party is, either directly or indirectly, required to exchange Electronic Documents with Owner, Engineer, or any Contractor or other entity directly contracted with the Owner to furnish Program-related services. Nothing herein will modify the requirements of the Agreement and applicable Construction Contract Documents regarding communications between and among the individual third parties and their respective subcontractors and consultants, except to the extent that any respective subcontractor or consultant exchanges Electronic Documents with the Owner or Engineer.
- e. When transmitting Electronic Documents, the transmitting Party makes no representations as to long term compatibility, usability, or readability of the items resulting from the receiving Party's use of software application packages, operating systems, or computer hardware differing from those established in this Protocol.
- f. Nothing herein negates any obligation (1) in the Agreement to create, provide, or maintain an original printed record version of Drawings and Specifications, signed and sealed according to applicable Laws and Regulations; (2) to comply with any applicable Law or Regulation governing the signing and sealing of design documents or the signing and electronic transmission of any other documents; or

(3) to comply with any notice requirements limiting or otherwise modifying the acceptance of Electronic Documents for such notice.

2. System Infrastructure for Electronic Document Exchange

- a. Each party will provide hardware, operating system(s) software, internet, e-mail, and large file transfer functions ("System Infrastructure") at its own cost and sufficient for complying with the EDP requirements. With the exception of minimum standards set forth in this EDP and any explicit system requirements specified by attachment to this EDP, it will be the obligation of each party to determine, for itself, its own System Infrastructure.
 - a. The maximum size of an e-mail attachment for exchange of Electronic Documents under this EDP is **10 MB**. Attachments larger than that may be exchanged using large file transfer functions or physical media.
 - b. Each Party assumes full and complete responsibility for any and all of its own costs, delays, deficiencies, and errors associated with converting, translating, updating, verifying, licensing, or otherwise enabling its System Infrastructure, including operating systems and software, for use with respect to this EDP.
- b. Each party is responsible for its own system operations, security, back-up, archiving, audits, printing resources, and other Information Technology ("IT") for maintaining operations of its System Infrastructure during the Project, including coordination with the party's individual(s) or entity responsible for managing its System Infrastructure and capable of addressing routine communications and other IT issues affecting the exchange of Electronic Documents.
- c. Each party will operate and maintain industry-standard, industry-accepted, ISO-standard, commercial-grade security software and systems that are intended to protect the other party from: software viruses and other malicious software like worms, trojans, adware; data breaches; loss of confidentiality; and other threats in the transmission to or storage of information from the other parties, including transmission of Electronic Documents by physical media such as CD/DVD/flash drive/hard drive. To the extent that a party maintains and operates such security software and systems, it will not be liable to the other party for any breach of system security.
- d. In the case of disputes, conflicts, or modifications to the EDP required to address issues affecting System Infrastructure, the parties will cooperatively resolve the issues; but, failing resolution, the Owner is authorized to make and require reasonable and necessary changes to the EDP to effectuate its original intent. If the changes cause additional cost or time to Engineer, not reasonably anticipated under the original EDP, Engineer shall be entitled to compensation as Additional Services for its costs associated with the revisions to the EDP, delayed adoption of Exhibit L or implementation of other Electronic Documents protocols.
- e. Each party is responsible for its own back-up and archive of documents sent and received during the term of any Project contract/agreement under this EDP, unless this EDP establishes a Project document archive, either as part of a mandatory Project website or other communications protocol, upon which the Parties may

rely for document archiving during the specified term of operation of such project document archive. Further, each party remains solely responsible for its own post-Project back-up and archive of project documents, as each party deems necessary for its own purposes, after the term of contract, or termination of the project document archive, if one is established.

- f. If a receiving party receives an obviously corrupted, damaged, or unreadable Electronic Document, the receiving party will advise the sending party of the incomplete transmission.
- g. The parties will bring any non-conforming Electronic Documents into compliance with the EDP. The parties will attempt to complete a successful transmission of the Electronic Document or use an alternative delivery method to complete the communication.
- h. **A project website shall not be maintained by the Engineer.**

B. Software Requirements for Electronic Document Exchange; Limitations

- 1. Each party will acquire the software and software licenses necessary to create and transmit Electronic Documents and to read and to use any Electronic Documents received from the other party (and if relevant from third parties), using the software formats required in this section of the EDP.
 - a. Prior to using any updated version of the software required in this section for sending Electronic Documents to the other party, the originating party will first notify and receive concurrence from the other party for use of the updated version or adjust its transmission to comply with this EDP.
- 2. The parties agree not to intentionally edit, reverse engineer, decrypt, remove security or encryption features, or convert to another format for modification purposes any Electronic Document or information contained therein that was transmitted in a software data format, including Portable Document Format (PDF), intended by sender not to be modified, unless the receiving party obtains the permission of the sending party or is citing or quoting excerpts of the Electronic Document for Project purposes.
- 3. Software and data formats for exchange of Electronic Documents will conform to the requirements set forth in the following Attachment 1 to this EDP, including software version, if listed.

C. Format and Distribution of Deliverables

- 1. By definition, "Documents" as used in this Agreement are documents expressly identified as deliverables from Engineer to Owner. Exhibit A of the Agreement identifies various Documents that Engineer is required to deliver to Owner as part of Engineer's services; Exhibit B is a schedule of such Documents. Engineer will transmit such Documents to Owner in the formats identified in Attachment 1 to this Protocol. If no specific format is identified for a deliverable Document, the format will be Portable Document Format (PDF).
- 2. If a Document will be distributed to third parties, such as prospective bidders and contractors, reviewing agencies, or lenders, the transmittal format for distribution will be as identified in Attachment 1 to this Protocol; provided, however, that if a format for

distribution of a specific Document is expressly stated in Exhibit A, then the Exhibit A format will take precedence. If no specific format is identified for distribution of a deliverable Document to third parties, the format will be Portable Document Format (PDF).

- a. If a format for Document distribution other than Portable Document Format (PDF) is specified, Owner shall first obtain a written, signed release from each third party to which the deliverable Document is distributed, establishing agreement to the following conditions:
 - a. The content included in the Electronic Documents prepared by or for Engineer and covered by the request was prepared as an internal working document for Engineer's purposes solely, and is being provided to the third party on an "AS IS" basis without any warranties of any kind, including, but not limited to any implied warranties of fitness for any purpose. As such, the third party is advised and acknowledges that the content may not be suitable for the third party's application, or may require substantial modification and independent verification by the third party. The content may include limited resolution of models; not-to-scale schematic representations and symbols; use of notes to convey design concepts in lieu of accurate graphics; approximations; graphical simplifications; undocumented intermediate revisions; and other devices that may affect subsequent reuse.
 - b. Electronic Documents containing text, graphics, metadata, or other types of data that are provided to the Requesting Party are only for the convenience of the third party. Any conclusion or information obtained or derived from such data will be at the third party's sole risk and the third party waives any and all claims against Engineer or Owner arising from the use of the Electronic Documents covered by the request, or of any data contained in such Electronic Documents.
 - c. The third party shall indemnify and hold harmless Owner, Engineer, and Engineer's Subcontractors and Subconsultants, from all claims, damages, losses, and expenses, including attorneys' fees and defense costs arising out of or resulting from the third party's use, adaptation, or distribution of any Electronic Documents provided under the request.
 - d. The third party agrees not to sell, copy, transfer, forward, give away or otherwise distribute this information (in source or modified file format) to any third party without the direct written authorization of Engineer, unless such distribution is specifically identified in the request and is limited to the third party's subcontractors and consultants. The third party warrants that subsequent use by the third party's subcontractors and subconsultants will comply with all terms of the Construction Contract Documents and any specific instructions or conditions established by Owner.
- b. If Engineer is required to assist or participate in obtaining such releases from third parties, such services will be categorized as Additional Services.

D. Requests by Project-Related Parties for Electronic Documents in Other Formats

1. Owner may release (or direct Engineer to release) an Electronic Document version of a Document prepared by or for Engineer, including but not limited to a deliverable Document as set forth in Exhibit F Paragraph 1.01.C, in a format other than those identified in Exhibit F Paragraph 1.01.B or 1.01.C of the Electronic Documents Protocol, or elsewhere in the Agreement, only if (a) a Contractor or other Project-related party (Requesting Party) makes a good faith request for such release, (b) Owner determines in its sole discretion that such release is prudent and will be beneficial to the Project, and (c) Owner obtains Requesting Party's written consent to the four conditions set forth in Exhibit F Paragraph 1.01.C.2.a.1-4 above. **If the Electronic Document is a CAD or drafting design file, then the Requesting Party shall complete and submit the Engineer's CAD Electronic Files Disclaimer, Release and Limitation of Liability Agreement.**
2. Any services by Engineer in connection with Owner or Engineer providing a Document to a Requesting Party under this Exhibit F Paragraph 1.01.D are Additional Services. Such services may include but are not limited to preparing the data in a manner deemed appropriate by Engineer. Owner may require reimbursement from the Requesting Party for the cost of such Additional Services, but compensation by Owner to Engineer for the Additional Services is not contingent upon Owner obtaining reimbursement from the Requesting Party.

EXHIBIT F—ATTACHMENT 1: SOFTWARE REQUIREMENTS FOR ELECTRONIC DOCUMENT EXCHANGE

Item	Electronic Documents	Transmittal Means	Data Format	Note (1)
a.1	General communications, transmittal covers, meeting notices, and responses to general information requests for which there is no specific prescribed form.	Email	Email	
a.2	Meeting agendas; meeting minutes; RFI's and Responses to RFI's; and Construction Contract administrative forms.	Email w/Attach	PDF	(2)
a.3	Contractor's Submittals (Shop Drawings, "Or Equal" requests, Substitute requests, documentation accompanying Sample submittals and other Submittals) to Owner and Engineer; and, Owner's and Engineer's Responses to Contractor's Submittals, Shop Drawings, Correspondence, and Applications for Payment	Email w/Attach	PDF	
a.4	Correspondence; Interim and Final Versions of reports, layouts, Specifications, Drawings, maps, calculations and spreadsheets, Construction Contract, Bidding/Proposal Documents, and Front-End Construction Contract Documents.	Email w/ Attach or LFE	PDF	(3)
a.5	Layouts, plans, maps, and Drawings to be submitted to Owner by Engineer for future use and modification	Email w/ Attach or LFE	DWG	
a.6	Correspondence, reports, and specifications to be submitted by Engineer to Owner for future word processing use and modification	Email w/ Attach or LFE	DOC	
a.7	Spreadsheets and data to be submitted to Owner by Engineer for future data processing use and modification	Email w/ Attach or LFE	EXC	
a.8	Database files and data to be submitted to Owner for future data processing use and modification	Email w/ Attach or LFE	DB	
Notes				
(1)	All exchanges and uses of transmitted data are subject to the appropriate provisions of the Agreement and Construction Contract.			
(2)	Transmittal of written notices is governed by requirements of the Agreement and Construction Contract.			
(3)	Transmittal of Bidding/Proposal Documents and Front-End Construction Contract Documents will be in manner selected by Owner in Exhibit A, Paragraph 1.05.A.1.a. Unless otherwise expressly stated, these documents and the Construction Contract will be transmitted in PDF format, including transmittals to bidders and Contractor.			
Key				
EMAIL	Standard Email formats (.htm, .rtf, or .txt). Do not use stationery formatting or other features that impair legibility of content on screen or in printed copies.			
LFE	Agreed upon Large File Exchange method (FTP, CD, DVD, hard drive.)			
PDF	Portable Document Format readable by Adobe® Acrobat Reader Version 2022 or later.			
DWG	Autodesk® AutoCAD. dwg format Version DWG 2018 .			
DOC	Microsoft® Word. docx format Version 365 .			
EXC	Microsoft® Excel .xlsx or .xml 365			
DB	Microsoft® Access .mdb 365			

EXHIBIT G—INSURANCE

ARTICLE 1—INSURANCE

Paragraph 6.04 of the Agreement, Insurance, is supplemented to include the following Exhibit G Paragraphs 1.01 and 1.02:

1.01 Insurance Policies and Limits

- A. In accordance with Paragraph 6.04.A of the Agreement, the insurance that Engineer must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$1,000,000
Each employee	\$1,000,000
Policy limit	\$1,000,000
Commercial General Liability	
General Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000
Automobile Liability	
Bodily Injury	
Each Person	\$ _____
Each Accident	\$ _____
Property Damage	
Each Accident	\$ _____
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$1,000,000
Excess or Umbrella Liability	
Each Occurrence	\$8,000,000
General Aggregate	\$8,000,000
Professional Liability	
Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000
Unmanned Aerial Vehicle Liability Insurance	
Each Claim	\$1,000,000
General Aggregate	\$2,000,000
Other Insurance [Specify]	
Each Claim	\$ _____
General Aggregate	\$ _____

- B. In accordance with Paragraph 6.04.C of the Agreement, the insurance that Owner must procure and maintain, and the policy limits of such insurance, are as follows:

Coverage	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Employer's Liability	
Each accident	\$ _____
Each employee	\$ _____
Policy limit	\$ _____
Commercial General Liability	
General Aggregate	\$750,000/claim
Personal and Advertising Injury	\$ _____
Bodily Injury and Property Damage—Each Occurrence	\$1,500,000
Automobile Liability	
Bodily Injury	
Each Person	\$ _____
Each Accident	\$ _____
Property Damage	
Each Accident	\$750,000/claim \$1,500,000/occurrence
Or	
Combined Single Limit	
Combined Single Limit (Bodily Injury and Property Damage)	\$ _____
Excess or Umbrella Liability	
Each Occurrence	\$ _____
General Aggregate	\$ _____
Unmanned Aerial Vehicle Liability Insurance	
Each Claim	\$5,000,000
General Aggregate	\$5,000,000
Other Insurance [Specify]	
Each Claim	\$ _____
General Aggregate	\$ _____

1.02 Additional Insureds

- A. Owner shall cause Engineer, its Subconsultants, and its Engineer's Subcontractors to be listed as additional insureds on any of Owner's general liability policies that are applicable to the Project. The following individuals or entities are to be listed on Owner's general liability policies of insurance (and on Contractor's policies required under Paragraph 6.04.D of the Agreement) as additional insureds:

Name of Additional Insured	Address
Thomas Dean & Hoskins Inc	1800 River Dr N Great Falls, MT 59401
--	--
--	--
--	--

- B. During the term of this Agreement the Engineer shall notify Owner of any other Subconsultant or Engineer's Subcontractor to be listed as an additional insured on Owner's and applicable Contractor's general liability policies of insurance.
- C. The Owner must be listed on Engineer's general liability policy as provided in Paragraph 6.04.B.
- D. For applicable Contractor's general liability policies of insurance, the additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
- E. For applicable Contractor's general liability policies of insurance, Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for Engineer, Subconsultants, and other design professional additional insureds.

EXHIBIT I—LIMITATIONS OF LIABILITY

ARTICLE 1—LIMITATIONS OF LIABILITY

Paragraph 6.10 of the Agreement is supplemented to include Exhibit I Paragraph(s) **Mutual Indemnification and 1.02, Limitation of Engineer's Liability:**

1.01 Mutual Indemnification

- A. Indemnification by Owner: To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Subconsultants, and Engineer's Subcontractors, from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

1.02 Limitation of Engineer's Liability

- A. Engineer's Liability Limited to Amount of Engineer's Compensation: To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, Subconsultants, and Engineer's Subcontractors, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever (including but not limited to direct, indirect, special, incidental, punitive, exemplary, or consequential damages) arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, Subconsultants, or Engineer's Subcontractors, will not exceed the total compensation received by Engineer under this Agreement.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

ARTICLE 1—COMPENSATION PACKET BC-2: BASIC SERVICES—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraphs 1.01, 1.02, and 1.03:

1.01 Compensation for Basic Services (other than Resident Project Representative)—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A (except for Resident Project Representative services, if any) as follows:

1. An amount equal to the cumulative hours charged to the Project by Engineer's personnel times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses, plus Engineer's Subcontractors' and Subconsultants' charges, if any.
2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer's services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer's Subcontractor's and Subconsultants' charges.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit J as Appendices 1 and 2.
4. The total compensation for such services is estimated to be **\$99,732** based on the following estimated distribution of compensation:

a. Geotechnical	\$22,500
b. Survey	<u>\$ 4,720</u>
c. Project Management	<u>\$ 1,448</u>
d. Civil Preliminary Design Phase	<u>\$16,764</u>
e. Civil Final Design Phase	<u>\$13,252</u>
f. Electrical Design Phase	<u>\$15,000</u>
g. Bidding/Proposal Phase	<u>\$ 3,936</u>
h. Construction Phase	<u>\$17,232</u>
i. Post-Construction Phase	<u>\$ 4,880</u>

5. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by Owner **and Agency**. See also Exhibit J Paragraph 1.03.C.2 below.
6. The total estimated compensation for Engineer's services included in the breakdown by phases incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Subcontractor's and Subconsultants' charges.

7. The amounts billed for Engineer's services under Exhibit J Paragraph 1.01 will be based on the cumulative hours charged to the Project during the billing period by Engineer's employees times Standard Hourly Rates for the applicable billing class, plus Reimbursable Expenses and Engineer's Subcontractor's and Subconsultants' charges.

1.02 Compensation for Reimbursable Expenses

- A. Owner shall reimburse Engineer for Reimbursable Expenses directly related to the provision of Basic Services, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
- B. Reimbursable Expenses include the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Project-related items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
- C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of **1.1**.

1.03 Other Provisions Concerning Payment

- A. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed to Engineer by Engineer's Subconsultants times a factor of **1.1**.
- B. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. Estimated Compensation Amounts
 1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before

Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer will be paid for all services rendered hereunder.

- D. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of **January 1**) to reflect equitable changes in the compensation payable to Engineer. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
- E. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

COMPENSATION PACKET RPR-2: RESIDENT PROJECT REPRESENTATIVE—STANDARD HOURLY RATES

ARTICLE 2—COMPENSATION PACKET RPR-2: RESIDENT PROJECT REPRESENTATIVE—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 2.01:

2.01 Compensation for Resident Project Representative Services—Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Resident Project Representative Services as follows:
1. Resident Project Representative Services: For services of Engineer's Resident Project Representative (RPR), if any, under Exhibits A and D, an amount equal to the cumulative hours charged by each class of Engineer's personnel providing RPR services times Standard Hourly Rates for each applicable billing class, plus RPR-related Reimbursable Expenses and RPR-related Engineer's Subcontractors' and Subconsultants' charges, if any. Standard Hourly Rates are set forth in Appendix 2, Standard Hourly Rates Schedule.
 2. The total compensation under this paragraph is estimated to be **\$53,676** based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a **35 working** day construction schedule.
 3. **If rate(s) for RPR services is not indicated in Appendix Two to Exhibit J, "Standard Hourly Rates Schedule," the Standard Hourly Rate for RPR Services is \$136 per hour.**
- B. Compensation for Reimbursable Expenses
1. For those Reimbursable Expenses that are directly related to the provision of RPR services and are not already accounted for in the compensation for Basic Services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1, Reimbursable Expense Schedule, to this Exhibit J when applicable.
 2. Such Reimbursable Expenses include, to the extent RPR-related, the expenses identified in Appendix 1 and the following: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
 3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to RPR services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of **1.1**.
- C. Other Provisions Concerning Payment

1. Whenever Engineer is entitled to compensation for the RPR-related charges of Engineer's Subcontractors and Subconsultants, that compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of **1.1**.
2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. Estimated Compensation Amounts
 - a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 - b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner **and Agency** written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer will promptly review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
4. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of **January 1**) to reflect equitable changes in the compensation payable to Engineer for RPR-related services and expenses. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
5. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner **at no cost**.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES
COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

ARTICLE 3—COMPENSATION PACKET AS-1: ADDITIONAL SERVICES—STANDARD HOURLY RATES

Article 2 of the Agreement is supplemented to include the following Exhibit J Paragraph 3.01:

3.01 Compensation for Additional Services—Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. For services of Engineer's personnel engaged directly on the Project pursuant to Exhibit A Paragraph 2.01 or 2.02, except for services as a consultant or witness under Exhibit A Paragraph 2.02.A.28 (which if needed will be separately negotiated based on the nature of the required consultation or testimony), an amount equal to the cumulative hours charged by each class of Engineer's personnel providing such Additional Services times Standard Hourly Rates for each applicable billing class, plus Additional Services-related Reimbursable Expenses and Additional Services-related Engineer's Subcontractors' and Subconsultants' charges, if any.
2. **The total compensation for services under Exhibit C Paragraph C3.01.A is estimated to be \$13,492. Compensation for Additional Services not listed in the following distribution shall be incorporated by Amendment.**
 - a. **A2.02.A.34 Grant Administration \$7,482**
 - b. **A2.02.A.33 - Owner's QA CMT \$3,260**
 - c. **A2.02.A.24 O&M Manual \$2,750**
3. **Engineer may alter the distribution of compensation between individual Additional Services noted herein to be consistent with services actually rendered, but compensation will not exceed the total estimated compensation amount unless approved in writing by the Owner and Agency.**

B. Compensation for Reimbursable Expenses

1. For those Reimbursable Expenses that are directly related to the provision of Additional Services, and are not already accounted for in the compensation for Basic Services or RPR-related services, Owner shall reimburse Engineer, using the rates set forth in Appendix 1 to this Exhibit J when applicable.
2. Such Reimbursable Expenses include, to the extent Additional Services-related, the expenses identified in Appendix 1 and the following categories: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone charges, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar items. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.

3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of **1.1**.
- C. Other Provisions Concerning Payment for Additional Services
1. Whenever Engineer is entitled to compensation for the charges of Engineer's Subcontractors and Subconsultants, such compensation will be the amounts billed by Engineer's Subcontractors and Subconsultants to Engineer times a factor of **1.1**.
 2. Factors: The external Reimbursable Expenses and Engineer's Subcontractors' and Subconsultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
 3. The Standard Hourly Rates and the Reimbursable Expenses Schedule will be adjusted annually (as of **January 1**) to reflect equitable changes in the compensation payable to Engineer for Additional Services-related services and expenses. **Changes will not be effective unless and until concurred in by the Owner and Agency.**
 4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner **at no cost**.

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

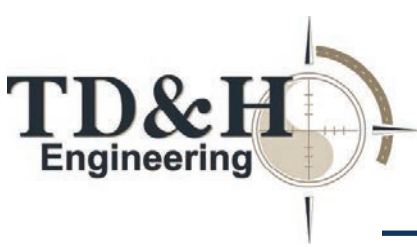
APPENDIX 1: REIMBURSABLE EXPENSES SCHEDULE

Reimbursable Expenses are subject to review and adjustment per Exhibit J. Rates and charges for Reimbursable Expenses as of the date of the Agreement are **presented in the Rate Schedule attached to Exhibit J, Appendix 2.**

EXHIBIT J—PAYMENTS TO ENGINEER FOR SERVICES AND REIMBURSABLE EXPENSES

APPENDIX 2: STANDARD HOURLY RATES SCHEDULE

- A. Standard Hourly Rates
 - 1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit J and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
 - 2. The Standard Hourly Rates apply only as specified in Exhibit J.
- B. Schedule: Hourly rates for services performed on or after the date of the Agreement are **provided in the attached Rate Schedule.**



2026 GREAT FALLS RATE SCHEDULE

Fee Compensation

TD&H's hourly billing rates for 2026 are provided in the adjacent table. We invoice for services rendered to a project to the nearest quarter hour.

Direct project costs will be invoiced at cost plus 10%. Examples of these costs include airfare, ground transportation, lodging, meals, shipping and express mail, outside reproduction services, and other direct costs required for the project.

Outside contract services including subconsultants, subcontractors and drilling services will be invoiced at cost plus 10% to cover additional insurance and administrative fees.

DESCRIPTION		HOURLY RATE
AA	Administrative Assistant	\$80.00
GA	Grant Administrator	\$108.00
LS1	Surveyor's Assistant	\$90.00
LS2	Surveyor	\$107.00
LS3	Survey Party Chief	\$126.00
LS4	Project Surveyor	\$145.00
LS5	Registered Land Surveyor	\$173.00
ENVS	Environmental Scientist	\$131.00
IH1	Industrial Hygiene Technician I	\$96.00
IH2	Industrial Hygiene Technician II	\$124.00
LT1	Lab Technician I	\$83.00
LT2	Lab Technician II	\$93.00
CR1	Construction Representative I	\$114.00
CR2	Construction Representative II	\$136.00
CR3	Construction Representative III	\$161.00
CR4	Construction Representative IV	\$196.00
LA	Landscape Architect	\$146.00
LP	Land Planner	\$181.00
CLS	CMT Lab Supervisor	\$135.00
CD1	CAD Designer I	\$96.00
CD2	CAD Designer II	\$125.00
CD3	CAD Manager	\$136.00
GC	CAD/GIS Specialist	\$114.00
ET	Engineering Technician	\$131.00
E1	Engineer I	\$124.00
E2	Engineer II	\$133.00
E3	Engineer III	\$155.00
E4	Engineer IV	\$181.00
E5	Engineer V	\$206.00
E6	Engineer VI	\$237.00
P	Principal	\$264.00
DCT	Deposition & Court Testimony	\$435.00
PMI	Project Manager I	\$191.00
PMII	Project Manager II	\$248.00
SPSS	Sr. Project Support Specialist	\$130.00

DIRECT REIMBURSABLES			
Vehicle Use: Passenger Vehicle Mileage	\$0.75/mile	Survey – Robotic Total Station	
Heavy Duty Vehicle Mileage	\$1.10/mile	Hourly Rate:	\$30.00
Survey – Global Positioning		Survey – Total Station with Data Collector	
Daily Rate:	\$500.00	Daily Rate:	\$100.00
Hourly Rate:	\$80.00	Hourly Rate:	\$20.00
Minimum Charge:	\$160.00		
Reproduction		CAD Plotter (In-house)	
Color (8.5x11)	\$1.50/page	Bond	\$0.90/SF
Color (11x17)	\$2.50/page	Mylar	\$3.30/SF
B&W (8.5x11)	\$0.60/page		
B&W (11x17)	\$1.20/page	XRF – Daily	\$350.00
NOTES: 1) Construction Materials Testing per Separate Fee Schedule. *See Materials Testing Fee Schedule for Additional Information			
2) Overtime work (above 40 hours per week, or weekends) increase hourly rates by 25%, or per quotation.			
3) Annual rate adjustments occur in January of each year and typically range from 3% to 4%.			

May 18, 2026

Montana Department of Commerce
Community Development Block Grant Program
301 S Park Ave.
PO Box 200523
Helena, MT 59620-0523

To whom it may concern,

The City of Libby is submitting an application to the Montana Department of Commerce Community Development Block Grant for a Planning Grant for the purpose of preparing a Capital Improvements Plan (CIP) for the City of Libby. The City has never undertaken CIP planning process. The City of Libby has worked on PER's and assessments to determine water, sewer, and other needs for the City and a CIP would compile this information into one document, provide a tool for city budgeting, and to apply for grant funds. The current plan focused in large part on the downtown area of the City. The plan would also analyze future growth areas to determine requirements for development into these area such as infrastructure needs, service needs, etc. The CIP will utilize information developed for the Growth Policy Update to analyze future infrastructure needs for growth.

The City understands this is a \$30,000 grant, and the estimated cost for this project is \$40,000. The City Council recognizes the need and will commit the necessary matching funds of \$10,000 to complete this project. This \$10,000 will be from City funds.

Sincerely,

Hugh Taylor, Mayor

May 18, 2026

Montana Department of Commerce
Community Development Division
301 S. Park
P.O. Box 200523
Helena, MT 59620

To whom it may concern,

It is the finding of the City of Libby, Montana, that the following activities approved for funding under the Montana CDBG program are defined as exempt activities under 24 Part 58.34, and meet the conditions specified therein for such exemption, of the Environmental Review Process for Title I Community Development Block Grant Programs, and that these activities are in compliance with the environmental requirements of related federal authorities. The activities and the statutory authority for exemption are listed below:

List applicable activities, descriptions, and authority.

1. Planning activities to include preparation of Growth Policy.

Authority -- Section 58.34(a)(1): Environmental and other studies, resource identification and the development of plans and strategies.

Sincerely,

Hugh Taylor, Mayor

May 18, 2026

Montana Department of Commerce
Community Development Division
301 S. Park
P.O. Box 200523
Helena, MT 59620

To whom it may concern,

This is to notify you that Samuel Sikes, City Administrator, is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the 2026 CDBG grant awarded to Libby, Montana.

Sincerely,

Hugh Taylor, Mayor