



## CITY OF LIBBY

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### REGULAR COUNCIL MEETING #1594

DECEMBER 6TH, 2021 @ 7:00PM  
COUNCIL CHAMBERS – CITY HALL

#### CALL TO ORDER:

- Prayer offered by Lloyd Miller.
- Pledge of Allegiance
- Roll Call
- Welcome
- Approve City Council Minutes #1593 dated 15 Nov 2021.

#### ANNOUNCEMENTS:

#### COMMITTEE REPORTS:

- City Administrators Report
- Fire
- Police
- Ordinances
- Lights/Streets/Sidewalks
- Building
- Water/Sewer
- Zoning Commission
- Cemetery/Parks
- Budget
- KRDC
- City-County Board of Health
- Park District Manager of Projects

**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.

**OLD BUSINESS:** Each previous agenda item will be introduced by the mayor with a description of the item and 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 Noble Investments request for easement by Sewage Treatment Plant.
2. Approve final plat for Girod subdivision.

**NEW BUSINESS:** Each new agenda item will be introduced by the mayor with a description of the item and 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 renewal of Fraser Management and Consulting. PLLC., contract.
2. Approve all businesses received to date.
  - a. Extra Help, Amber Lee Lundin, 46 Leisure Ln., Home care and care giving.
  - b. Kootenai Treasures, LLC, 501 Mineral Ave., Retail and consignment.
  - c. T-Mobile West, LLC, 410 Mineral Ave., Retail.
  - d. Welding Solutions, LLC, 223 Port Blvd., Welding fabrication.
3. Approve Claims and Payroll for November 2021.

**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.

1. IP negotiations.

**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 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:** 12/2/21

## UNAPPROVED MINUTES

The City Council held Council Meeting # 1593 on Monday, November 15, 2021, in the Council Chambers at City Hall.

### Call to Order:

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

The pledge of Allegiance was completed, and Roll Call commenced. Present were Mayor Peggy Williams, Councilors Gary Beach, Kristin Smith, Brian Zimmerman, Zachariah McNew, Rob Dufficy, City Administrator Sam Sikes and Deputy Clerk Charlotte Luedecke. Councilor Hugh Taylor was absent.

Mayor Williams welcomed all present and prayer was offered by Matthew Coblenz.

Approve City Council Minutes #1592 dated November 2021. Councilor Dufficy **MADE A MOTION** to approve, and Councilor Smith **SECONDED**.

Councilors Beach, Smith, Zimmerman, McNew, and Dufficy voted **FOR**.

**MOTION PASSED.**

Announcements: None

### Committee Reports:

Ordinances: Councilor Smith reported that a meeting was held last Monday to discuss recreational marijuana and the course to be taken. More meetings will be scheduled in the future.

Zoning: Councilor Smith reported that a meeting is scheduled for 22 November 2021.

Public Comment on Non-Agenda Items: None

### Old Business:

**Adopt Ordinance 1995** – Zoning previously annexed property as Highway Commercial. (Second Reading)

Councilor Smith **MADE A MOTION** to approve, and Councilor McNew **SECONDED**.

Councilors Beach, Smith, Zimmerman, McNew, and Dufficy voted **FOR**.

**MOTION PASSED.**

### **New Business:**

Approve all business licensed received to date:

Councilor Smith **MADE A MOTION** to approve business license for Noble Industries, LLC, and Councilor McNew **SECONDED**.

Councilors Beach, Smith, Zimmerman, McNew, and Dufficy voted **FOR**.

**MOTION PASSED.**

### **Unfinished Business:**

**IP negotiations:** Mayor Williams and Councilor Smith had a meeting with Will from The Western News to bring him up to date for the article he is writing.

Councilor Zimmerman asked Mayor Williams if there had been any telephone calls with Allen Payne.

Mayor Williams replied no calls only emails.

**Noble Industries request for easement by Sewage Treatment Plant.** (In Committee): Councilor Zimmerman referred to the map provided and reported that because of the design, trying to get around the corner of the creek looks to be the best plan. There will be a bottomless culvert rather than a bridge. A letter has been sent to legal for review, there were a couple of items such as a date extension and some verbiage to be taken care of. The letter should be ready for the December 6, 2021, agenda. This letter will be permission from the Council for the easement, but the final easement will come with the final plans and that will be after the BNSF easement. This will get talks going, the whole process could take 5 years to get to that point.

Councilor Smith asked for clarification that this letter would state that the City would grant the easement if BNSF does their part.

Mayor Williams replied that it is contingent on final plan approval at the time Noble Investments are ready to build, there is a primary as well as an alternative plan. When ready to build, Noble will tell us which plan as well as the details.

Councilor Smith asked if the purposed easement was a concern for any buildings.

Mayor Williams replied that this was one of the concerns as it would have clipped the corner of the wet well, and by moving to a bottomless culvert's position away from our buildings has given us the necessary space.

Dave Kemmemer expressed concerns of flooding on county property.

### **General Comments from the Council:**

Mayor Williams announced that the Clerk/Treasurer position has been filled, Leann Monigold will be starting Wednesday, November 17, 2021.

There will be a Public Hearing December 6, 2021, at 6:15pm regarding a Conditional Use Permit for the old Elks building.

The City has submitted the paperwork for the Low-Income Heating & Water Assistance Program (LIHWAP) to the State for approval and should be in effect soon.

Councilor Dufficy wished everyone a Happy Thanksgiving.

**Adjournment:**

Councilor Dufficy MADE A Motion to adjourn and Councilor McNew SECONDED.

Councilors Beach, Smith, Zimmerman, McNew, and Dufficy voted FOR

MOTION PASSED.

Mayor Williams adjourned the meeting at 7:15 PM.

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Mayor, Peggy Williams

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Deputy Clerk, Charlotte Luedecke

## AGREEMENT

This easement and indenture is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between City of Libby, PO Box 1428, Libby, Montana 59923, (hereinafter referred to as City) and Noble Investment Properties of PO Box 1592, Libby Montana 59923 (hereinafter referred to as Noble).

City does hereby give and grant unto Noble, his heirs, assigns and successors, a reciprocal and permanent non-exclusive easement for the construction, reconstruction, use and maintenance of a road and utilities, over, upon, along, and across a portion of the following described lands in the Country of Lincoln, State of Montana:

Said easement shall be a strip of land sixty (60) feet in width, with such additional widths as may be necessary for needed cuts and fills, over and across portions of Section 33, Township 31 N, Range 31 W.

The easement and right-of-way conveyed herein is for all lawful purposes and for the purpose of constructing, using, maintaining, and repairing a road and utilities, over, upon, along and across the easement and right-of-way as a means of ingress and egress to Noble's property more particularly described as:

Tracts 1E, 2A, 4A, 4C, 4D, 10B1 and 10E in NE ¼, Section 32, Township 31N, Range 31W, Lincoln County, Montana.

The parties herto agree that the rights hereinabove granted shall be subject to the following terms and conditions:

Noble shall be solely responsible for the costs of the engineering, surveying, permitting, utility relocation, stream crossing, and road construction to the City of Libby or Lincoln County Standards for the new portion of the road.

It is understood that said road will be constructed over and upon portions of the Noble property as previously described and portions of the Fink property described as: Parcel C of C.O.S. 4413 on Section 33, Township 31 North, Range 31 West, Lincoln County, Montana, Tract 3 of C.O.S. 1300 in Sections 32 and 33, Township 31 North, Range 31 West, Lincoln County, Montana, and Tract 4 of C.O.S. 1300 Section 32, Township 31 North, Range 31 West, Lincoln County, Montana. This new road will connect Kootenai Views Drive to Burlington Northern Road and Jay Effar Road located south and west of Noble's property.

Noble will cause to be recorded more complete reciprocal easements which grant use of the new portion of the road located on the Noble and Fink properties to City upon completion of construction.

If the new road is not completed or all necessary easements are not acquired within five (5) years of signing of this Agreement then City shall have the right to cancel this Agreement and rescind any easements and/or access granted to Noble.

**IN WITNESS WHEREOF**, the parties herto have executed this instrument as of the day and year first above written.

\_\_\_\_\_  
Chris Noble

\_\_\_\_\_  
By: City of Libby

STATE OF MONTANA        )  
                                  )  
County of Lincoln        )        SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Chris Noble, known to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

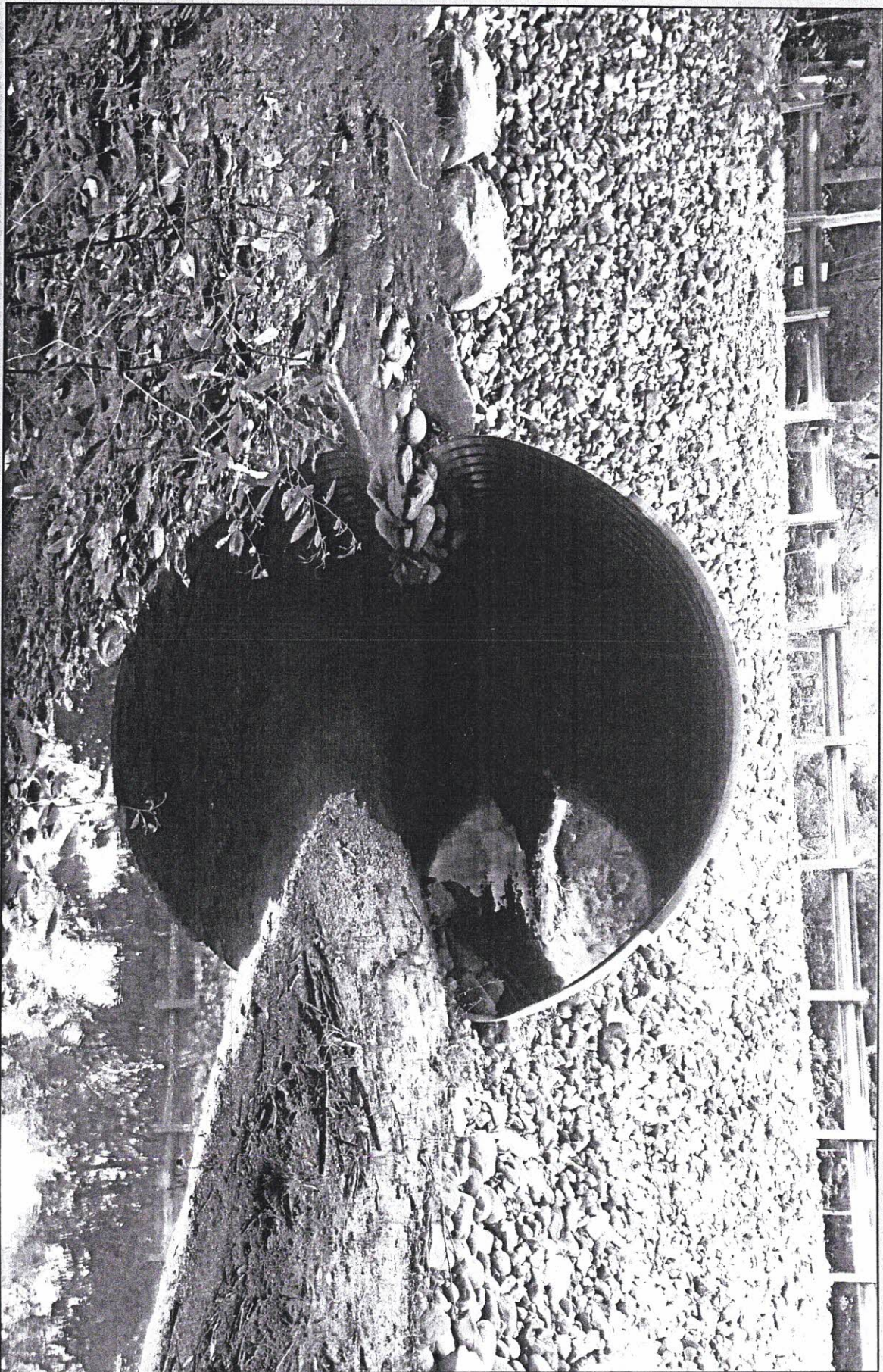
STATE OF MONTANA        )  
                                  )  
County of Lincoln        )        SS:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a Notary Public for the State of Montana, personally appeared City of Libby, known to me to be the entity whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

# Embedded Pipe





**FRASER MANAGEMENT & CONSULTING, PLLC.  
690 NORTH MERIDIAN, SUITE 103  
KALISPELL, MT. 59901**

Samuel Sikes, City Administrator  
City of Libby  
PO Box 1428  
Libby, MT. 59923

November 29, 2021

Re: Retainer- Amendment #10

Dear Sam;

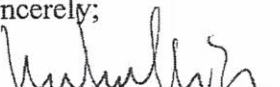
Fraser Management & Consulting, PLLC. will provide general consulting services for one year, January thru June 2022, for \$200.00 per month. The retainer fee will provide unlimited access for consultation by either phone or email.

Additional services will be provided Libby as authorized by the Mayor or City Administrator. All services would be provided by Michael W. Fraser, PE. at an hourly rate of \$200.00. Only time greater than ½ hour will be recorded and invoiced. Charges for travel, mileage and time are not invoiced. Travel expenses, mileage for meeting outside northwest Montana are invoiced at the Federal rate.

Additional services such as attending meetings, preparation of studies, applications or plan reviews would be provided with authorization. Attached is Exhibit A the general conditions of service.

Please review with the Mayor. With approval have the Mayor sign and return a copy of this letter as the basis of the agreement.

Sincerely;

  
\_\_\_\_\_  
Michael W. Fraser, PE.

The City of Libby accepts this proposal for General Consulting Services for one year at a rate of \$200.00 per month.

\_\_\_\_\_  
Peggy Williams, Mayor

\_\_\_\_\_  
Date

## EXHIBIT A

### GENERAL CONDITIONS FOR PROJECT MANAGEMENT & CONSULTING

1. **INVOICE AND PAYMENT:** Fraser Management & Consulting, PLLC. (FMC) will invoice services monthly by the 10<sup>th</sup> to the Client. Payment is due by the last of the month in the office of FMC. FMC will assess a late fee of not less than ½ hours time or 10% of the past due amount, whichever is greater on all past due invoices. FMC reserves the right to stop work on all past due accounts, until payment in full is received.
2. **LIMIT OF LIABILITY:** The limit of liability of FMC to the Client for any cause or combination of causes shall be, in not greater than the amount of the fee. No action relating to the services provided under this Agreement may be brought by either the Client or FMC more than two years from the date of completion or notice of termination by either party.
3. **INSURANCE:** FMC shall at all times maintain Professional Liability and General Liability coverage.
4. **ASSIGNMENT:** Neither FMC or the Client may transfer or assign this Agreement without the consent of the other.
5. **ENTIRETY OF AGREEMENT:** This Agreement embodies the entire agreement and understanding between FMC and Client. No alteration, change, or modification of this Agreement shall be made unless in writing as an Amendment, signed by FMC and Client.
6. **PERMITTING:** FMC will prepare or assist in the preparation of applications for various approvals, on behalf of the Client. FMC warrants the applications will be prepared with care and in accordance with the application guidelines. FMC does not warrant, guarantee or represent the applications will be approved by the reviewing agencies.
7. **STANDARD OF CARE:** Services provided FMC under this Agreement will be provided in manner consistent with the level of care and skill ordinarily exercised by other similar professionals. No representations, express or implied are included in this Agreement.
8. **GENERAL INDEMNITY:** Client agrees to defend, indemnify and hold harmless FMC against all claims, obligations and liabilities arising from or related to the performance of project management services under this Agreement, and resulting from the Client's negligent acts or omissions. FMC agrees to defend, indemnify and hold harmless Client from any claims, obligations, and liabilities arising from the performance of project management services under this Agreement and resulting from the negligent actions, omissions of FMC.
9. **GOVERNING LAW:** FMC and Client agree the venue and jurisdiction for any action arising under this Agreement is the District Court located in Flathead County, Montana.
10. **TERMINATION:** Either party may terminate by tendering notice. Termination shall be 30 days after receipt of the notice. In the event the owner terminates services the final invoice shall include any costs of FMC related to termination. In the event FMC terminates, the owner shall pay all fees to the date of termination and other costs related to termination.