



# City of Libby Libby Montana

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## REGULAR COUNCIL MEETING #1661 MONDAY, SEPTEMBER 16, 2024 @ 7:00 PM COUNCIL CHAMBERS – CITY HALL

### **CALL TO ORDER:**

- Pledge of Allegiance
- Prayer by Jeff O'Connell
- Roll Call
- Welcome
- Approve minutes of regular City Council meetings #1658 held August 5, 2024, meeting #1659 held August 19, 2024, meeting #1660 held September 3, 2024, and Public Hearing held September 3, 2024.
- Announcements

### **COMMITTEE REPORTS:**

- City Administrators Report
- Fire
- Police
- Ordinances
- Lights/Streets/Sidewalks
- Building
- Water/Sewer
- Zoning Commission
- Cemetery/Parks
- Finance
- Wildlife
- 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. Labor and Industry awareness/banner program.

**PUBLIC HEARING 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 Resolution # 2041 to Authorize Submission of CDBG Application
2. Approve Montana CDBG Certification for Application
3. Approve Forest Service Agreement for Flower Creek Streambank stabilization project (2025)
4. Approve Tee Box subdivision
5. Approve Resolution # 2040 Local Government Study permissive levy
6. Approve all claims received to date.
7. Approve Business License received to date:
  - a) 5 Star Cleaning Service, 1004 Idaho Ave., Individual, Commercial and residential cleaning services.

**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.

Discussion to amend Libby Development Fund Policy and application process.

**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:** 9/12/24

## UNAPPROVED MINUTES

The Libby City Council held regular meeting #1658 on Monday, August 5, 2024, in Council Chamber at Libby City Hall.

### **Call to Order:**

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

Present were Mayor Williams, Councilors Gary Beach, Melissa Berke, Kristin Smith, Administrator Sam Sikes, Clerk/Treasurer Leann Monigold, and (via Zoom) Councilors Ian Smith, Hugh Taylor, Brian Zimmerman, and City Attorney Dean Chisholm.

**Announcements:** Mayor Williams announced the city moved into Stage 1 fire restrictions on Saturday at the request of Steve Lauer, Fire Marshall, along with the Forest Service, State, and other agencies. Last year Dean set up a resolution so the mayor could set restrictions and remove the in step with those agencies.

### **Committee Reports:**

**Administrator:** Administrator Sikes reported the Sewer Department's oxidization ditch has had a problem with the oxygen levels, Lead Operator Deanna Bee has corrected the issue. The SWPPP has been received by the DEQ and initial training on the plan will be at the next safety meeting.

Water Department: repairing the identified leaks and adjusting the gate valve to only allow minimum flow is keeping water levels steady in the upper reservoir.

Other items: Engineers are working on Spruce Street project for the SLIPA Grant, annual Rural Development reports have been submitted, working with DEQ on open pit mining permit for gravel pit on Pipe Creek Rd., and the Lead Service Line Survey is being completed.

**Streets Supervisor:** Justin Williams reported the City Crew has been sweeping, jetting, patching potholes, removal and cleanup of trees. Islands in City Hall and Pure North parking lots have been cleaned up and rock has been added. Curb and gutter repairs on Bush, Poplar, and California. Paving for street openings due to water repairs, replacing sidewalks, and repairs made to Fireman's Park bathroom. Rebuilt press at WWTP, added a new water main extension into old ASA Wood property for new Ortho rehab building.

Upper reservoir water levels are holding steady, July 8 was 9ft. 8in., July 19 was 9ft. 7in., July 29<sup>th</sup> was 9ft. 4.5in., and Aug 2 was 9ft 4.5in. Still waiting to hear back from the most recent water leak survey.

Councilor K. Smith expressed excitement for the sidewalk replacement and inquired what the City's contribution is. Mr. Williams stated the city contributes \$10 a lineal foot for residential and \$15 a lineal foot for commercial.

**Police:** Chief Ercanbrack reported 255 calls for service in the month of July, responding to 3 assault, 11 thefts, 8 crashes, 8 juvenile cases, and 47 traffic stops.

**Lights/Streets/Sidewalks:** Councilor Beach reported waiting for response from engineer for Mineral Avenue traffic and stop sign.

**Parks district Manager of Projects:** Tony Petrusha reported, working with Libby Park District, Port Authority, and Lincoln County to manage facilities in Libby area, ground maintenance of Port recreational facilities has been completed, EPA review of groundwater contamination is done, and swim pond start date will be established. Mr. Petrusha described location near the fishpond would be located. LORA is working with USFS for 12 miles of the Snowshoe trail, Pioneer Park bike track design approved Aug 4<sup>th</sup>. Construction will be done by experienced volunteers; Boy Scout Eagle project is reworking existing trail.

The following projects have been submitted for the Natural Resources Damage (NRD) grant:

Balsam Street Sidewalk (rejected), 2-year funding for Recreation manager and contract is being drawn up to move forward, Flower Creek rubble pile removal may be moving forward pending support letter from City of Libby, and Norgard Trail and parking area is moving forward.

**Fire:** Councilor Beach reported 8 calls for the month of July, 1 call in City, 4 calls in rural Fire District, and 3 calls outside City or RFD. 1 vehicle, 3 grass/wildland, 1 mutual aid, 1 fire alarm, and 2 electrical for a total of 51 calls for 2024. Inspecting, flushing and painting hydrants continues through August.

Mayor Williams, regarding the Parks report, stated support letters for the rubble pile and Balsam Street have been submitted and accepted by NRD. We now will have to wait for the decision.

**Public Comment on Non- Agenda Items:**

Zannie Riddle commented on the need for a stop sign on Mineral Avenue. Due to the angled parking, it is challenging to back out safely.

Zack McNew, 127 Cabinet View Rd., commented on August 16<sup>th</sup>, 3pm – 5pm, the park next to the old high school will be dedicated as Rotary Community Park, invited Council to attend the ribbon cutting at 4pm.

## **New Business:**

### **Approve Rotary to take over Dept. of Labor Banner Project:**

Janelle Kimberlin from Department of Labor and Industry described the two phases of the Industry Awareness Banner project, funded through the City with the use of a LOR grant. The initial project is now complete, and several entities have been approached to take over the project. Rotary has agreed to take over the banner project with Council approval. Ms. Kimberlin described the responsibilities and possible ideas, with the banner project, going forward.

The council inquired how it would look going forward and what kind of involvement and decisions the City would have on the type of banners are hung on the brackets. Acknowledging it would be good, because of manpower, to have another entity managing the banners and Christmas decorations going up and down.

McKenzie Williams, Rotary Club, said the project would be kept local, positive, and continue to beautify the town.

The council was in agreement to let Rotary take over the project but would like to have a policy created stating the City would be involve with the decision on what type of banners would be hung. The council agreed to postpone the decision until the next meeting on the 19<sup>th</sup> of August, to give more time for questions to be answered and some a policy to be created.

Janelle Kimberlin requested approval to post flyers about the banners on the light poles downtown during Ignite the Nites. The council agreed that would be fine.

### **Approve Street Closure for Chainsaw Carving, September 4<sup>th</sup> – 9<sup>th</sup>:**

Troy Douthit requested a street closure for the 8<sup>th</sup> annual chainsaw carving contest, explaining it is the same street closure plan as the last 4 years, closing the 4<sup>th</sup> at 7am and streets will be clean by 6am on the 9<sup>th</sup>. Mr. Douthit requested the open container be approved during those hours.

Councilor K. Smith **MADE A MOTION** to approve the street closure, as well as a waving of the open container ordinance for the chainsaw carving September 4<sup>th</sup> through 9<sup>th</sup>, as detailed in the timeline, Councilor Berke **SECONDED**.

Councilors Beach, Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

### **MOTION PASSED.**

Mayor Williams reminded Mr. Douthit for the open container variance there are restrictions he would need to abide, like making sure it stays out of the hands of minors, requesting he look at the ordinance to know the requirements.

**Approve Street Closure for Paint it Pink, September 28<sup>th</sup>:**

Rachel Rebo and Jayda St. Auge, Glacier Bank, requested a street closure for the Paint it Pink Fun Run/Walk, from Glacier bank on 6<sup>th</sup> St. through 3<sup>rd</sup> St., September 28<sup>th</sup>, 9am – 11am and requested barriers.

Councilor Beach **MADE A MOTION** to approve the request of street closure by the Glacier Bank for the Fun Run, Councilor Berke **SECONDED**.

Councilors Beach, Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Approve Preliminary budget (Public Hearing/final budget approval August 19 meeting):**

Clerk Treasurer Monigold explained the process of starting the preliminary budget is to carry over the beginning expenditure budget from the previous year, revenue budget figures are entered as the information is received, the property tax information was received earlier in the day. Tax revenue had been estimated at a \$20,000 increase for the preliminary budget meeting, actual will be \$21,600. New tax being received this year is the 3% cannabis tax, the first quarterly disbursement has been received and has been estimated at \$13,000 for the year, other revenue is estimated by averaging the last 4 years received. Another new item added this year was the Local Government Study fund being funded by a tax levy, voted in last year.

The expenditure budget is carried over from the beginning of the previous year then is adjusted by entering any known increases such as contracts and insurance. The Emergency Relief account was added, set at 2 mills. With the slight increase in revenue, training budgets were increased for all departments, chemicals for Water and Sewer, the police budget was the highest increase.

Councilor K. Smith **MADE A MOTION** to approve the preliminary budget, Councilor Beach **SECONDED**.

Councilors Beach, Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

Mayor Williams announced the public notice for the Budget Public Hearing will be advertised in Wednesday's Western News and the following Wednesday and will be part of the regular meeting on the 19<sup>th</sup>.

**Approve all claims received to date.**

Councilor Berke **MADE A MOTION** to approve all claims received to date and Councilor Beach **SECONDED**.

Councilors Beach, Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Approve all business licenses received to date.**

Byron O’Bleness Construction LLC, Heritage Drywall, Intercept Handyman Services, and Libby Locksmith.

Councilor K. Smith **MADE A MOTION** to approve all business licenses received to date, Councilor Berke **SECONDED**.

Councilors Beach, Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Unfinished Business:**

**Discussion to amend Libby development Fund Policy and application process:**

Mayor Williams requested the conversation be postponed.

**General Comments from Council:**

Mayor Williams commented there are a lot of unmowed, uncut weeds around town that could become a potential fire hazard and would like to think of a way to get the word out about the need to cut the weeds in the alleys and yards before they become a problem.

Mayor Williams commented, talking about the EPA, DEQ, and Natural Resource Damage grant, a Zoom conference with John Tester was held last week included Kristin, Hugh, Alan Payne, herself, regarding the EPA, asking them to help bring the EPA on our side in the negotiations with IP.

Councilor Taylor and K. Smith commented, it was a good conversation and well received. Looking forward to working with them and after immediately receiving calls following the meeting, hope to gain some traction to help mitigate some of the water damage.

Councilor K. Smith commended that the meeting was to ask that his office put pressure on EPA for IP to come the table. Second, to get EPA to revisit the technical impracticability waiver, issued over 30 years ago for the lower aquifer for the ground water, with the advance in technology in that time, we think they would be willing to reevaluate. Third, was to consider making requests to the Inspector General's office as to why it is taking 40 years and another projected 40 years to clean up Libby's groundwater. Those questions were well received.

Mayor Williams commented that a call was received, following the conversation, from the EPA HQ in DC, asking a couple of background questions. They are going to assemble a team to meet with us to try to find resolutions to some of those questions. During the Conversation John Tester asked if we had been in contact with the Natural Resource Damage grant. Mayor Williams said just a few days prior she had been contacted to see if the city would be willing to look at the NRD program regarding International Paper. A Zoom call was held with Sydney Stewart and Doug Martin and questioned why now since this has been going on for 40 years? They are going to start looking into making that request and suggested the potential of maybe being able to write our statement for our claim into that request, but it is iffy at this time and is at the discretion of the governor. During the last 3 years we have tried to meet with the EPA to try to get them to the table, that has fallen through. There was a long period of silence and in that one week there was a lot of action, now we wait and see.

K. Smith wanted to let everyone know that IP had completely stopped communicating with the city and EPA has been no friend to the city to facilitate renegotiations.

**ADJOURNMENT:**

Councilor Berke **MADE A MOTION** to adjourn, Councilor Beach **SECONDED**.

Councilors Beach, Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

Mayor Williams adjourned the meeting at 8:04 PM.

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Mayor Peggy Williams

Attest: \_\_\_\_\_

Clerk/Treasurer Leann Monigold



## UNAPPROVED MINUTES

The Libby City Council held regular meeting #1659 on Monday, August 19, 2024, in Council Chamber at Libby City Hall.

### **Call to Order:**

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

Mayor Williams announced Mr. Beach had resigned this afternoon, so his name would not be on the roll call.

Present were Mayor Williams, Councilors Melissa Berke, Ian Smith, Kristin Smith, Hugh Taylor, Brian Zimmerman, Clerk/Treasurer Leann Monigold, and (via Zoom) and City Attorney Dean Chisholm.

### **Approve minutes for regular City Council meeting #1656 held July 1, 2024, and #1657 held July 15, 2024:**

Councilor Zimmerman **MADE A MOTION** to approve minutes for regular City Council meeting #1656 and #1657, Councilor Berke **SECONDED**.

DC Orr, 1117 Nevada Ave., commented his request to be put on the agenda in the previous meeting did not get added to the minutes, and requests again to have a spot on the agenda to review policy to be added to an agenda with an action item to vote on policy for getting on agenda and to instruct Council what he believes they are doing wrong. Requesting the previous minutes be changed to give more details of what he had said.

Councilor I. Smith **MADE A MOTION** to correct the minutes to reflect what Mr. Orr was trying to say about wanting to be put on the agenda, Councilor Berke agreed, stating she was not sure what the difference was then what was written. The council discussed what Mr. Orr was wanting in the minutes. Council Taylor agreed, Councilor Zimmerman didn't believe it mattered because it reflected just fine, Councilor K. Smith agreed with Mr. Zimmerman.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR** with the corrections.

### **MOTION PASSED.**

**Announcements:** Mayor Williams announced fire restrictions had been lifted at the recommendation of Steve Lauer, Fire Marshal. The Budget Hearing originally scheduled for the meeting was moved to September 3<sup>rd</sup> as part of the general meeting. At 6:30 on September 3<sup>rd</sup>, Mike Fraser has requested to hold a public hearing for the CDBG grant request.

### **Committee Reports:**

**Zoning Commission:** Councilor K. Smith announced the Zoning Commission will hold a meeting on September 9<sup>th</sup> to review a zoning change request as well as an annexation request.

**Finance:** Clerk/Treasurer Monigold reported receiving the information from the auditor's office to start our Annual Financial Report, once receiving the final needs list the year end can be finalized and have also already received the first needs list to begin our FY24 audit, which is usually not received until January.

### **Public Comment on Non- Agenda Items:**

DC Orr, 1117 Nevada Ave., inquired about the IP settlement.

Councilor Taylor responded, IP negotiations were discussed, and an update was given at the last meeting, and would be happy to brief Mr. Orr after the meeting tonight.

Karen Dinkins, 1210 Dakota Ave., commented Igniters appreciated the street closure and the car show went off without a hitch, but had concerns there was only one police officer on duty.

### **New Business:**

#### **Approve Rotary to take over Dept. of Labor Banner Project:**

Mayor Williams announced a resolution has been drafted for the Rotary taking over the Department of Labor project with the city banners.

Janelle Kimberlin from Department of Labor and Industry wanted to clarify the end goal regarding the Industry Awareness banners and answer any questions. The intent was to bring awareness of local opportunities to the community. The end goal is for an organization to take over the banner project and continue promoting local awareness through the banners. Apologizing for the miscommunication with the council and community regarding the intent of passing on the project to a local organization and would like to work with council and community on a solution to continue displaying banner to promote local awareness. One solution is the banners could be a soft handoff and to an organization where the Department of Labor and Industry will continue to assist in the project, per the council's guidelines.

Councilor K. Smith inquired about the banner frames and if Industry Awareness banners could be used on those frames in the future.

Ms. Kimberlin said the goal was for an organization to take over the entire project and to continue promoting positive awareness of Libby and gave several examples. Explaining for the Department of Labor the project had to be industry awareness that had to show workforce, but the project itself could take on a whole other meaning.

Mayor Williams stated the Rotary decided not to attend and to wait and see what developed as a resolution and a policy, they would then need to take it back to their board before they move forward with this. Mayor Williams read the draft Resolution.

Councilor Berke inquired if the banners could reflect community awareness other than industry for clarity. Yes, that was correct.

Councilor K. Smith suggested changes to the wording of the Resolution, replace "oversight authority" with "management" and questioned the phrase "retains final authority for operations and expenditures" remove "expenditures" and add somewhere "any expenses that are requested by the city to have the authorization"

Council discussed the wording of the resolution and how to say the city would have the final say on what goes on the poles, if funds were needed for new banners they would have to be requested, and the meaning of seasonal decorations.

Council discussed the Rotary's intent for the project heard at the last meeting, questioning if they were willing to do the wreaths and discussed the resolution that was drafted.

DC Orr, 1117 Nevada Ave., spoke highly of the Rotary and urged Council to let them take over the project.

Janelle Kimberlin inquired how the Council would foresee the future of the project, if Rotary did not agree to takeover.

Councilor K. Smith encouraged the mayor to talk to the Rotary first to find out what they are willing to do or want to do.

Mayor Williams postponed the discussion and resolution to September 3<sup>rd</sup>.

**Local Study Commission election by acclamation, position appointments:**

Mayor Williams read Resolution #2035 to cancel the Local Government Study Commission election from the ballot and to appoint electors should three or fewer candidates file. Mayor Williams explained write in candidates have until September 3<sup>rd</sup> to register. If there are not candidates the Council will need to call for applications and make appointments after the November election.

Councilor K. Smith **MADE A MOTION** to adopt Resolution #2035, Councilor Berke **SECONDED**.

DC Orr, 1117 Nevada Ave., inquired who the one candidate was and how the other candidates would be solicited to be appointed by acclamation. Encouraging Council to put together a commission that would change the landscape and give people a voice.

Councilors Berke, I. Smith, K. 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 and Councilor Berke **SECONDED**.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Approve all business licenses received to date.**

Cultured Pearl and LAS Masonry.

Councilor Zimmerman **MADE A MOTION** to approve all business licenses received to date, Councilor I. Smith **SECONDED**.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Unfinished Business:**

**Discussion to amend Libby development Fund Policy and application process:**

Mayor Williams inquired if anyone had anything new to add, there were no new comments, Mayor Williams said she would review the July 15<sup>th</sup> minutes to see what was discussed and move forward from there during the next discussion.

**General Comments from Council:**

Councilor I. Smith encouraged the community to submit their applications for the Local Government Study.

Mayor Williams commented on the resignation of Mr. Beach, per council policies, the position will be advertised, and would be looking at doing an appointment in the next 30 days.

**ADJOURNMENT:**

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

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

Mayor Williams adjourned the meeting at 7:43pm.

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Mayor Peggy Williams

Attest: \_\_\_\_\_

Clerk/Treasurer Leann Monigold

## **UNAPPROVED MINUTES**

Libby City Council held a public hearing Tuesday, September 3, 2024, at 6:30pm in Council Chambers at City Hall to solicit public comment on a proposed application to the Montana Department of Commerce's Community Development Block Grant (CDBG) Program and other programs, as applicable, for replacing the wastewater lift station at the corner of Montana Avenue and First Street.

### **CALL TO ORDER:**

Mayor Williams called the meeting to order at 6:31 pm.

Present were Mayor Peggy Williams, Councilors Ian Smith, Kristin Smith, Hugh Taylor, Brian Zimmerman, Administrator Sam Sikes, and City Clerk-Treasurer Leann Monigold. Councilor Berke was not in attendance.

Mayor Williams explained the public hearing was regarding the Community Development Block Grant application, the meeting was properly noticed in the Western News, August 20<sup>th</sup> and 27<sup>th</sup>.

Mike Fraser explained there was a public meeting in April to discuss possible projects, from that meeting, replacement of the Montana Ave. and First Street sewer lift station was identified as the priority project.

In 2019 the city amended the Preliminary Engineering Report (PER), that was the document used to submit application for funding of \$800,000 for the new Auxiliary Bar Screen at the treatment plant, which relieves the solids load on the pump station, reducing maintenance and extends its life. In 2022 the city submitted an application for the new computerized control at the plant and sewer main replacements, those projects are currently under construction, the sewer main replacements will start middle of September. The main replacements will cost an additional \$1.4 million, the mains were identified in the 2019 PER. The Montana and First St. lift station was another priority identified.

Mr. Fraser stated this is the second public hearing to discuss the project in more detail, and the expected outcome. Mr. Fraser explained the background on the existing lift station and details of problems that have been identified. The project will replace the wet well all the way to the surface, on the surface will be an enclosure with self-driving suction lift pumps that will be easily accessible and will be able to keep operating to maintain essential services if there is a power failure.

Project cost is \$1,100,000 paid for with MCEP grant of \$660,000, RRGL grant of \$125,000, and CDBG grant of \$434,000. RRGL grant was submitted in May, MCEP grant submitted in June, and CDBG grant application is due in October.

Mr. Fraser explained the impacts and disadvantages that will take place during construction and addressed the benefits of the project.

Councilor K. Smith inquired how long it would take to find out about the CDBG funding.

Mr. Fraser said in late fall we would know the ranking for the RRGL and MCEP grants and in spring of 2025 Department of Commerce will make the awards of the Block Grant. Startup into design will be a 2026 construction project. Mr. Fraser stated with his retirement he would carry it through the funding stage, then the new engineer would take over at the startup of the project.

Mayor Williams announced the CDBG Resolution and Certificate of Application will be on the September 16 agenda.

**PUBLIC COMMENT:** None

**ADJOURNMENT:**

Mayor Williams adjourned the meeting at 6:37 pm.

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Mayor, Peggy Williams

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Clerk-Treasurer, Leann Monigold

## UNAPPROVED MINUTES

The Libby City Council held regular meeting #1660 with FY 25 Budget Public Hearing on Tuesday, September 3<sup>rd</sup>, 2024, in Council Chamber at Libby City Hall.

### **Call to Order:**

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

Present were Mayor Williams, Councilors Ian Smith, Kristin Smith, Hugh Taylor, Brian Zimmerman, Administrator Sam Sikes, Clerk/Treasurer Leann Monigold, and (via Zoom) and City Attorney Dean Chisholm.

**Announcements:** Mayor Williams announced the appointment for the vacant council position will be at 6pm on September 16<sup>th</sup>, applications are available on the website and due at City Hall by 5pm September 11<sup>th</sup>. On September 16<sup>th</sup> there will be a public hearing regarding a variance request for a fence that was built in the visibility triangle.

### **Committee Reports:**

**Administrator:** Administrator Sikes reported for the Sewer Department, SCADA Electronics is installing plant controller, hoping to have mains repaired and asphalt repairs completed before the snow flies, and a blower for the oxidization ditch has been sent to Kalispell to have the bearing rebuilt.

Water Department, leak survey has been completed and hope to start fixing the leaks in the next few weeks, the survey shows roughly 68 million gallons a year in loss and adding that to the projected 110 million gallons a year savings from the last go around we should be saving about 36% of water produced by the treatment plant.

Other items, Lead Service Line Survey is being completed.

**Streets Supervisor:** Justin Williams reported the crew has been sweeping, jetting, and patching potholes. A hydrant has been rebuilt on Oak St., there have been 8 interments at the Cemetery for the month of August. Two sewer lines have been replaced on Montana Ave and Louisiana Ave, three water service lines replaced on Conifer, Commerce Way, and Scenery Loop. Two water mains and one sewer main extensions have been extended into the old Asa Wood property. Other activities include a culvert replacement on Education Way, paving on Louisiana, 3<sup>rd</sup> Street, Spruce St., Education Way and Parmenter, and two loads of peat moss hauled from Moyie Springs to the cemetery to mix with backfill.

**Police:** Chief Ercanbrack reported 218 calls for service for the month of August, Seth Power has completed field training and is on his own, Officer Smart is at the Academy and receiving good reports from the Academy. The car show went well, there was one bad crash, fortunately everyone lived. Alcohol was involved.



**Streets/Lights/Sidewalks:** Councilor Zimmerman reported he has not received the information from Gary yet. Councilor K. Smith said she did chat with the city engineer about the request for some attention on Mineral, and he is going to put together some recommendations to consider.

**Zoning Commission:** Councilor K. Smith announced a meeting will be held Monday the 9<sup>th</sup> to review an annexation zoning request from the pickleball court and review a zoning change request on one of the properties at old Asa Wood.

**Public Comment on Non- Agenda Items:**

DC Orr, 1117 Nevada Ave., commented this was the fourth time he is requested a spot on the agenda to discuss the policy for getting put on the agenda. Mr. Orr believes he is being censored by not being allowed on the agenda and expressed his reasons why he believes the council is not doing their job.

**Public Hearing – City of Libby 2024-2025 budget:**

Mayor Williams called the Public Hearing to order at 7:20pm.

Mayor Williams explained the slides on the PowerPoint presentation that covered, in detail, the Revenue and Expenditures for all funds in the fiscal year 25 budget.

Councilor K. Smith expressed her appreciation and commented she has been working with the city for 15 years and on council for 8 years, and has seen in the last 10 years, the staff at the city has done a better and better job each year with the City’s resources. Expressing that she is proud of the work and dedication put into creating a budget that includes monies that can be spent on useful technology and projects. It was not a thing 12 years ago.

Mayor Williams explained part of that has been made possible using some of the ARPA money and Covid monies to payoff debt, roll remaining budgets into the Capital Improvement Plan, and the departments don’t pinch pennies, but they make sure it is spent well.

There were no public comments.

Mayor Williams closed the Public Hearing at 7:42pm to resume the regular meeting.

**New Business:**

**Approve Resolution 2037 fixing annual appropriations for the City of Libby for 2024-2025 budgets:**

Councilor Zimmerman **MADE A MOTION** to approve Resolution 2037, Councilor K. Smith **SECONDED**.

Mayor Williams explained Resolution 2037 is a summary form of what is seen on the budget.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED**

**Approve Resolution 2038 setting tax levy for the year 2025 upon all real property in the City of Libby for General and Special Purposes:**

Mayor Williams read Resolution 2038.

Councilor Zimmerman **MADE A MOTION** to approve Resolution 2038, Councilor I. Smith **SECONDED**.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED**

**Approve Resolution 2039 setting the salaries and wages of elected officers, appointed officers, and city employees:**

Councilor Zimmerman **MADE A MOTION** to approve Resolution 2039, Councilor I. Smith **SECONDED**.

Councilors Berke, I. Smith, K. 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 and Councilor I. Smith **SECONDED**.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Approve all business licenses received to date.**

JCCS Concrete LLC and A Handy Helper Services LLC.

Councilor Zimmerman **MADE A MOTION** to approve all business licenses received to date, Councilor K. Smith **SECONDED**.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**Unfinished Business:**

**Discussion to amend Libby development Fund Policy and application process:**

Mayor Williams commented Mr. Taylor would like to rule out loans and inquired what other items anyone wanted to expressly rule out so she can figure out how to start wording the document.

**Industry Awareness Banners:**

Mayor Williams explained Rotary decided to pull out taking over the banners. Janelle is trying to figure out what to do with the banners and how we want to approach that. Asking everyone for input about what they want to see and not see so a simple policy could be created.

Mayor Williams explained the information she had as to why they did not want to take on the banner project. Then gave examples of what type of banners she has seen in other communities.

Councilor K. Smith said the city should develop a policy of what we want and are willing to partner somehow and not just dump on somebody else, feeling the city should step up and be party in some fashion.

**General Comments from Council:**

Councilor K. Smith commented, realizing Mr. Orr has come and says he's got to be on the agenda. With her experience, years on Council and previous experience, when you have a strong Mayor/Council form of structure, the mayor sets the agenda, all mayors in the past have set the agenda and personally has no issues with it. There are council policies and procedures they operate by, and she does not believe Mr. Orr is being censored, he gets to stand up and comment. Nothing is prohibiting Mr. Orr from submitting something in writing for them to consider but does not believe he has an action item for them to act on, his three minutes is enough berating the council on a bi-weekly basis. If Mr. Orr has something for the Council to consider she would like to see it in a formal proposal to be considered. Mr. Orr did not stick around for general comments, which is when Council decides things they might want to request be added to the agenda.

Mayor Williams suggested if the Council wants information about agendas, soon having half the Council with no official training, it is time to look into bringing Dan Clark in and do some training and updating. The current policies and procedures and current agenda policy came from a meeting with Dan Clark about 6 years ago and there have been no updates to them since that time.

Mayor Williams and Council Zimmerman discussed, with Mr. Beach gone and a new member being appointed along with the new members of Council, training would be very beneficial.

Councilor K. Smith commented that the Montana Local Government Center, with the MSU Extension office, do a phenomenal job helping municipalities across the state and Dan Clark is an institution in himself and worth every minute.

Mayor Williams reminded the training is not paid for by the legislature so the city would need to pay to have him come. Councilor Zimmerman suggested checking with Dan to see if he would be available in the next 30-90 days.

Councilor I. Smith disagreed with not letting Mr. Orr on the agenda.

Councilor Taylor stated all taxpayers and constituents should have the opportunity to get answers. Mayor Williams said he has the opportunity to get answers to his questions. Councilor K. Smith stated she believes what he says on the platform and what steps he takes for communication are two different things.

Councilor I. Smith said he can see his point of view for censorship by not letting somebody get up and say their peace.

Councilor Smith said it is absolutely not censorship, every single person has three minutes to get up and speak their peace and they can also speech on every other agenda item. Unless it's a matter of municipal business that we need to act on a person is not an action item, they are not an agenda item unless it is a like a proclamation for somebody's honor, that is the only time she has ever seen an individual as an agenda item.

Councilor Taylor commented after being approached by several people about possible drought conditions last year and seeing signs going up about a hotel coming in and Noble's building, what are the impact fees being addressed on the Port Authority property?

Administrator Sikes replied, with the water and sewer fees there is a charge for lodging by rooms, the city is looking at over \$100,000 in fees for that. Before they can connect to water and sewer the city engineer will have to approve and study to see if our water plant and sewer plant can handle the infrastructure itself. If the city engineer figures our systems cannot handle it, then it will be up to the developer to hire an engineer to figure out how to make upgrades to our system, at their expense for both water and sewer, to be able to handle that. Councilor Taylor had concerns about the amount of water after the possibility of rationing water last year. Mr. Sikes explained that with the 36% increase from the repairs, roughly 110 million gallons, 68 million gallons would well cover that, and the sewer plant is roughly at 60% capacity right now.

Councilor Taylor inquired about the annexing of the golf course area and the new subdivision in the Port area and having to allow for water and sewer, with concerns of adding more people if running short already. Mayor Williams and Councilor Zimmerman explained the golf course area was already in the city, but the new subdivision still has to be approved, and the water and sewer study is part of that. Mayor Williams said Mr. Justin Williams has been monitoring the reservoir every Friday.

Mr. Williams said July 15<sup>th</sup> the reservoir was at 9’8” on the side of the dam, a week later 9’7”, the following week 9’5”, the following week 9’4”, these were the hottest time of the summer.

Councilor K. Smith said looking at policy, fees, or some kind of structure. It has been discussed in the past but has not gotten to the crucial point to have a moratorium.

Council discussed the concerns and solutions of having a larger impact on the City’s current infrastructure.

Councilor K. Smith reminded everyone the Chainsaw Carving was being set up and encouraged everyone to go enjoy it.

**ADJOURNMENT:**

Councilor Zimmerman **MADE A MOTION** to adjourn, Councilor K. Smith **SECONDED**.

Councilors Berke, I. Smith, K. Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

Mayor Williams adjourned the meeting at 8:09pm.

\_\_\_\_\_

Mayor Peggy Williams

Attest: \_\_\_\_\_

Clerk/Treasurer Leann Monigold

Public Notice

The City of Libby Board of Adjustments will hold a Public Hearing on Monday, September 16th, 2024, in the Council Chambers of City Hall during the 7:00 pm Council Meeting to consider a variance for a solid fence within the visibility triangle at 504 Utah 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 293-2731, city.admin@cityoflibby.com, or stop by City Hall at 952 E. Spruce St.

PUBLISHED IN The Western News August 30, 2024.  
MNAXLP

STATE OF MONTANA

LINCOLN COUNTY

AFFIDAVIT OF PUBLICATION

**DARLENE TREWEEK** BEING DULY SWORN, DEPOSES AND SAYS: THAT SHE IS THE LEGAL CLERK OF THE WESTERN NEWS A TWICE WEEKLY NEWSPAPER OF GENERAL CIRCULATION, PRINTED AND PUBLISHED IN THE CITY OF LIBBY, IN THE COUNTY OF LINCOLN, STATE OF MONTANA.

**LEGAL ADVERTISEMENT** WAS PRINTED AND PUBLISHED IN THE REGULAR AND ENTIRE ISSUE OF SAID PAPER, AND IN EACH AND EVERY COPY THEREOF ON THE DATES of AUG 30, 2024

AND THE RATE CHARGED FOR THE ABOVE PRINTING DOES NOT EXCEED THE MINIMUM GOING RATE CHARGED TO ANY OTHER ADVERTISER FOR THE SAME PUBLICATION, SET IN THE SAME SIZE TYPE AND PUBLISHED FOR THE SAME NUMBER OF INSERTIONS.

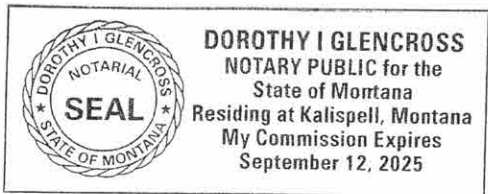
*Darlene TrewEEK*

Subscribed and sworn to  
Before me this Aug 30, 2024

*Dorothy I. Glencross*

Dorothy I. Glencross

Notary Public for the State of Montana  
Residing in Kalispell  
My commission expires 9/12/2025



## Basics of Quasi-Judicial Decision-Making

### What does it mean to be acting in a quasi-judicial capacity?

- Acting like a judge
- Deciding the rights, duties or obligations of a specific person or entity
- Making a decision based on facts developed at a hearing
- Applying existing standards or criteria to the facts

### Are we always in a quasi-judicial capacity?

- No, some actions are legislative, and others are administrative
- *Legislative* actions are more general and permanent, typically involve policy-making, usually don't relate to a single person or entity, and affect their rights only in the abstract
- *Administrative* actions carry out existing policies and purposes, are generally temporary in operation or effect, and typically don't involve the need for notice or a hearing

### So, what are some examples?

#### Quasi-Judicial

#### Legislative

#### Administrative

Think: Judge

Legislator

Executive

#### Zoning/rezoning

Development application

Subdivision request

Liquor licensing

#### Variance request

Conditional or special review use

Health/safety ordinance

Master plan approval

Adoption of tax

Annexation

Vacating a road

Amending development regulations

Buying equipment

Appointing boards

Acting on contracts

Operating policies

License agreements

Determining benefits

### Why are there special constraints on how we handle quasi-judicial matters?

- Because the due process clause and other laws require we ensure *fundamental fairness in the decision-making process*, which mandates the applicant and other interested parties have notice and a meaningful opportunity to be heard before a neutral and impartial decisionmaker
- Failure to adhere to these principles can increase the risk of personal liability and the risk that your decision will be overturned

### **So, what should I do/not do in relation to quasi-judicial matters?**

- DO stick to your criteria – use the criteria list from your staff report or another summary if needed
- DO avoid ex parte (outside the hearing) contacts; that is, do not discuss quasi-judicial matters outside of the noticed hearing
- DO disclose unavoidable ex parte contacts
- DO avoid inappropriate confrontations or inquisitions
- DO take time (and ink) to decide – use a resolution and, particularly for complex or contentious cases, consider making a tentative decision and directing staff to prepare a draft resolution or order with conclusions of law and factual findings, for further consideration at your next meeting
- DO ask for staff advice on how the criteria operate
- DON'T make your decision based on irrelevant criteria
- DON'T become a witness in a proceeding where you are the “quasi-judge”
- DON'T participate if you weren't there for the whole hearing (or at least listened to the tape of any portion you missed)
- DON'T participate if you have a conflict of interest...and know that even an appearance of impropriety can be as damaging as an actual conflict
- DON'T sign any "pro" or "con" petitions
- DON'T make up your mind before the hearing (bias)
- DON'T ignore the record; if all the evidence points to yes. . .

### **Another way to look at quasi-judicial decision making is to remember that you are acting like a judge, and ask yourself:**

- Would a judge seek out citizens and invite or ask them to come and testify as witnesses in a case pending before the judge?
- Would a judge allow himself/herself to be “lobbied” on a pending matter at home or at the local supermarket?
- Would a judge compromise the appearance (and possibly reality) of fairness by singling out one side or another to be overly friendly with?
- Would a judge decide a matter in which the judge had a financial interest, or on which the judge's mind was already made up?
- Would a judge make a public statement that could come back to haunt him/her later on in terms of displaying a possible bias?

***\*This handout is for general reference only and not legal advice. Specific legal and other questions should be referred to the entity's own legal counsel and staff as appropriate.***





**City of Libby**  
**Libby Montana**  
www.cityoflibby.com

PO Box 1428  
952 E. Spruce Street  
Libby MT, 59923  
(406) 293-2731  
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**NOTICE OF PUBLIC HEARING**  
**BOARD OF ADJUSTMENTS**  
**SEPTEMBER 16, 2024 @ 7:00PM**  
**COUNCIL CHAMBERS – CITY HALL**

**CALL TO ORDER:**

- Pledge of Allegiance
- Roll Call
- 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 City of Libby Board of Adjustments will hold a public hearing during the city council meeting to consider a variance to allow a solid fence within the visibility triangle on the property located at 504 Utah Avenue. The variation is requested by the property owner.

**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: 08/29/24

## Public Notice

The City of Libby Board of Adjustments will hold a Public Hearing on Monday, September 16th, 2024, in the Council Chambers of City Hall during the 7:00 pm Council Meeting to consider a variance for a solid fence within the visibility triangle at 504 Utah 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 293-2731, [city.admin@cityoflibby.com](mailto:city.admin@cityoflibby.com), or stop by City Hall at 952 E. Spruce St.

Publish on 30 August 2024.

## 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)

HEARING  
16 SEPT 2024  
PUBLISH  
30 AUG 2024

### **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)

#### 12.40.060 - Visibility triangle.

- A. A visibility triangle is described as the area being formed by measuring eighty (80) feet along each of the centerlines of the street rights-of-way at an intersection and then connecting the two points with a straight line.
- B. Improvements in the Visibility Triangle.
  - 1. The owners of property shall be allowed a wire mesh fence within the visibility triangle of not more than six feet in height, or open rail fence not more than four feet in height, providing that the rails do not constitute more than one-third of the fence area.
  - 2. Tree boles with limbs trimmed between thirty (30) inches and eight feet in height from the existing centerline road elevation, existing, growing, placed, or installed shall be permitted.
- C. It is unlawful for either the owner or the person in possession of any premise to permit traffic hazards to exist. Any owner of any property failing to trim any trees, shrubs, or bushes in conformity with this chapter shall be notified by the city to do so and such notice shall require trimming in conformity with this chapter within fifteen (15) days after the date of such notice. Upon the expiration of such period, the city may cause the trimming to be done and the cost thereof may be collected from the owner of said property in the manner as other costs are assessed against the property owner.

(Ord. 878 (part), 1975)

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

Pictures taken on 26 July 2024, Homeowner and contractor were both informed by the Building Inspector, Streets Supervisor, and City Administrator that a solid fence could not be constructed within the visibility triangle. Requirements and parameters were explained for fence type and construction within the visibility triangle.



Picture taken on 26 August 2024 after the fence was completed. The line is roughly where the visibility triangle is located.







# City of Libby

952 E. SPRUCE | POST OFFICE BOX 1428

LIBBY, MT. 59923 | Phone 406-293-2731 | Fax 406-293-4090 | Website: [www.cityoflibby.org](http://www.cityoflibby.org)

## Application for Variance City of Libby Board of Adjustment

Applicant:

Name: Rianne Barnes

Address: 504 Utah Ave, Libby, MT 59923

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Property:

Owner Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Legal Description: (lot#, block# subdivision) Leona @ Addn (L/006/001)

Corner lot?  No Zoning District: \_\_\_\_\_

Variance related to:

Setback\_\_\_ Building/Fence Height\_\_\_ Lot Coverage Percentage\_\_\_ Business\_\_\_ Other

Summarize variance request:

Rebuilding fence to original height upon purchase of home, after replacing public sidewalks

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 attached. 12 pages total

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant signature: Rianne Barnes

Date submitted: 8-1-2024

Board of Adjustments action: Approved\_\_\_ Disapproved\_\_\_ Date action taken: \_\_\_\_\_

Board notes: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## **Application for variance**

### **City of Libby Board of Adjustment**

#### **Property owner and Applicant-**

**Rianne Barnes**

**504 Utah Ave, Libby Mt 59923**

**Explain the extent of circumstances...** Friday, July 26, 2024 I was preparing to leave for my doctor appointment when Walter Snyder, Building Inspector, appeared in my front yard. He had both of his children in his car. He was taking photos of my fence. I exited my house and asked how I could help him. He told me I couldn't build my fence. When I asked why he began telling me that I couldn't interfere with the vision triangle. I told him that I had discussed that very issue with Matt Backen and Justin Williams last year. We measured it off and I have the fence 48 inches in height from the sidewalk, as that was what I understood Justin to describe was appropriate by the corner of my lot. Walter then stated I needed a "chain-link fence on the corner of my lot for safety of the road." I asked him if safety is a concern, then why is the stop sign directly across the street occluded by branches? I was told last year I could have a 48 inch fence in the corner of my lot. A 48 inch fence is what was here prior to my having to remove it temporarily (July 3, '23 – July 6 '24) to redo the public sidewalks that were in extreme disrepair and a danger to walkers, especially the elderly. (see photos attached) Also, it is my understanding that the 'vision triangle's' 80 feet from the center of the intersection on each side would yield a approximate length of 113.12 feet, enough view of cars, pickup trucks, logging trucks, especially since they are ALL supposed to be slowing to a FULL stop within just a few seconds time of reaching the intersection, when the speed in the residential area of Libby is 25 MPH.

Per ordinance 12.40.010 The lowest branch of any tree shall not be less than eight feet above ground where the same extends over sidewalks. Per Ordinance 12.40.020 B. hedges or shrubbery shall not extend over any part of a public sidewalk, street, or alley in the city.

Also

Per ordinance 12.40.050 The city retains rights-of-way and public spaces inside the city limits. If safety is of importance, shouldn't the limbs of the trees surrounding ALL stop signs in The City of Libby be properly maintained by the city maintenance personnel?

Also

If drivers obey the traffic laws in Libby and the state of Montana, a FULL stop at either sign on (street) will afford the driver full view in all directions of all on-coming traffic, pedestrians, bicyclists...

**Provide any information you'd like the board to consider-**

To date I have spent over \$11,608 to replace the 100+ year old sidewalks around my lot. They are a subgrade of the road. I do not know the elevation of the centerline of Utah Ave, since it is a crowned road, but I feel this makes my fence less than 48 inches tall, since it is measured and built from the sidewalks. The original fence upon purchasing my home in January 2022, was 48 inches tall from the height of the sidewalks, also sunken below the grade of Utah Ave. It was dilapidated, having rotten posts, and in serious disrepair. If a fence does not require a permit to be built, Walter Snyder stated Friday, July 26, and also confirmed per Libby website, why then does there need an ordinance governing the fence height, and type, especially one that adheres to the 'vision triangle' to keep everyone safe? Does this Ordinance pertain to intersections with stop signs, blind intersections, or all intersections? Why isn't there any information to be found whether property owners can rebuild an existing fence? I found a Google map photo of the fence around my property being present in 2009. Therefore, the fence surrounding my home was present prior to any ordinance that was adopted June 2023. I feel my fence being built at the same height as the fence present in the 2009 photo from Google, and present when I purchased my home January 2022, having never been interfering with the visibility around my neighborhood intersection before, as simply being rebuilt after my replacing the public sidewalks with very little reimbursement from the city, and at great expense to myself.

Sincerely,



Rianne Barnes

8.4.2024

12.40.010 - Minimum height of branches over sidewalks and streets.

The lowest branch of any tree shall not be less than eight feet above the ground where the same extends over sidewalks. Any tree where limbs or branches extend over the streets, driveways, or any place where traffic passes under such tree or branch shall be fourteen (14) feet above the surface of the street.

(Ord. 878 (part), 1975)

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

12.40.020 - Trimming of hedges and shrubbery.

- A. Any owner, agent, tenant, or occupant of any real property shall trim all hedges and shrubbery adjacent to the sidewalks, streets, or alleys, so that the same will not interfere with pedestrian or public travel.
- B. Hedges or shrubbery shall not extend over any part of a public sidewalk, street, or alley in the city. All such hedges and shrubbery shall be trimmed back to the property line regardless of whether the property line abuts a sidewalk, street, or alley. It is the intent of this section that no hedge or shrubbery shall be allowed to grow upon or extend over any of the alleys, streets, or sidewalks in the city limits.

(Ord. 878 (part), 1975)

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

12.40.050 - Authority over trees outside property lines.

The mayor city retains rights-of-way and council public are spaces given full and complete control of all trees growing within the confines of inside the city limits which are outside of the property lines of the respective lots, plots, and tracts.

(Ord. 878 (part), 1975)

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



June 24, 2022



June 24, 2022



July 5, 2022



July 5, 2022





July 5, 2022



May 5, 2023



Screen shot of video taken  
July 3, 2023



Posts Remain in Ground July 13 2023



July 3, 2024 New posts being installed



Old posts in ground July 9, 2023



old Sence

Google image June 2009

504 Utah Ave



504 Utah Ave





# City of Libby

952 E. SPRUCE | POST OFFICE BOX 1428

LIBBY, MT. 59923 | Phone 406-293-2731 | Fax 406-293-4090 | Website: [www.cityoflibby.org](http://www.cityoflibby.org)

## Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Bianne Barnes

Address of variance request: 504 Utah Ave, Libby

Property owned by: Bianne Barnes

Zoning District: Leonard ADDN C4000/001

Proposed variance request:

Rebuilding fence to original height with solid slats upon purchase of home, after replacing public sidewalks.

Respondent: (completing survey)

Name: Sandra Bachmann

Address: 415 Utah ave Libby

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

I have been contacted by, Bianne concerning the above proposed variance request. Date: 8/5/24

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: fence is beautifully done and a wonderful addition

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: 8/5/24

Print Name: Sandra Bachmann



# City of Libby

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LIBBY, MT. 59923 | Phone 406-293-2731 | Fax 406-293-4090 | Website: [www.cityoflibby.org](http://www.cityoflibby.org)

## Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Rianne Barnes

Address of variance request: 504 Utah Ave, Libby

Property owned by: Rianne Barnes

Zoning District: Leonard ADDN (L1006/001)

Proposed variance request:

Rebuilding fence to original height with solid slats upon purchase of home, after replacing public sidewalks.

Respondent: (completing survey)

Name: Achievements Inc. Supported Living apt.

Address: 418 Utah

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

I have been contacted by, Rianne Barnes concerning the above proposed variance request. Date: 8/5/24

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: Sommer Navarro - Ex. Director Date: 8/5/24

Print Name: Sommer Navarro



# City of Libby

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## Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Bianne Barnes

Address of variance request: 504 Utah Ave, Libby

Property owned by: Bianne Barnes

Zoning District: Leonard ADDN (L006/001)

Proposed variance request:

Rebuilding fence to original height with solid slats upon purchase of home, after replacing public sidewalks.

Respondent: (completing survey)

Name: BEN SIMMONS

Address: 514 UTAH AVE

Phone: \_\_\_\_\_ Mail: \_\_\_\_\_

I have been contacted by, \_\_\_\_\_ concerning the above proposed variance request. Date: 8-5-2024

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: [Signature] Date: 8-5-2024

Print Name: Ben Simmons



# City of Libby

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## Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Rianne Barnes

Address of variance request: 504 Utah Ave, Libby

Property owned by: Rianne Barnes

Zoning District: Leonard ADDN (L/006/001)

Proposed variance request:

Rebuilding fence to original height with solid slats upon purchase of home, after replacing public sidewalks.

Respondent: (completing survey)

Name: Eric Mills

Address: 510 UTAH

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

I have been contacted by, Rianne Barnes concerning the above proposed variance request. Date: 8-15-24

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: The fence is beautiful, I have no objections

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: 8-15-24

Print Name: Eric Mills





# City of Libby

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## Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Rianne Barnes

Address of variance request: 504 Utah Ave, Libby

Property owned by: Rianne Barnes

Zoning District: Leonard ADDN (L1006/001)

Proposed variance request:

Rebuilding fence to original height with solid slats upon purchase of home, after replacing public sidewalks.

Respondent: (completing survey)

Name: Sam KRAFT

Address: 806 Wisconsin

Phone: \_\_\_\_\_ :mail: \_\_\_\_\_

I have been contacted by, Rianne Barnes concerning the above proposed variance request. Date: 8-5-24

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: Samuel L Kraft Date: 8-5-24

Print Name: Samuel L. KRAFT



# City of Libby

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## Variance Request Neighborhood Survey Form

Petitioner: (requesting variance)

Name: Bianne Barnes

Address of variance request: 504 Utah Ave, Libby

Property owned by: Bianne Barnes

Zoning District: Leonard ADDN (L1006/001)

Proposed variance request:

Rebuilding fence to original height with solid slats upon purchase of home, after replacing public sidewalks.

Respondent: (completing survey)

Name: Cecil J. Riggle Jr.

Address: 507 Utah Ave

Phone: \_\_\_\_\_

I have been contacted by, Bianne concerning the above proposed variance request.

Date: 8-5-2024

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: Cecil J. Riggle Jr.

Date: 8-5-2024

Print Name: Cecil James Riggle Jr.

Notice for the Second CDBG  
Public Hearing

The City of Libby, will hold a public hearing on September 3, 2024 at 6:30 PM MDT in the Council Chambers at City Hall, 952 Spruce Street, for the purpose of obtaining public comments regarding a proposed application to the Montana Department of Commerce's Community Development Block Grant (CDBG) Program and other programs, as applicable, for replacing the sewer lift station at the corner of Montana Avenue and First Street. At the public hearing, the proposed project will be explained, including the purpose and proposed area of the project, activities, budget, possible sources of funding, and any costs which may impact local citizens as a result of the project. All interested persons will be given the opportunity to make comments regarding this proposed project. Comments may be given orally at the hearing or submitted in writing before 5:00 PM MDT September 3, 2024 to the City Administrator of the City of Libby. Anyone who would like more information or who wants to submit questions or comments should contact Michael Fraser at 406-253-4326 or mfraser@montanasky.net.

Done this the 15th day of August 2024.

By: Peggy Williams, Mayor

PUBLISHED IN The Western  
News August 20 & 27.  
MNAXLP

STATE OF MONTANA

LINCOLN COUNTY

AFFIDAVIT OF PUBLICATION

**DARLENE TREWEEK** BEING DULY SWORN, DEPOSES AND SAYS: THAT SHE IS THE LEGAL CLERK OF THE WESTERN NEWS A TWICE WEEKLY NEWSPAPER OF GENERAL CIRCULATION, PRINTED AND PUBLISHED IN THE CITY OF LIBBY, IN THE COUNTY OF LINCOLN, STATE OF MONTANA.

**LEGAL ADVERTISEMENT** WAS PRINTED AND PUBLISHED IN THE REGULAR AND ENTIRE ISSUE OF SAID PAPER, AND IN EACH AND EVERY COPY THEREOF ON THE DATES OF AUG 20, 27, 2024

AND THE RATE CHARGED FOR THE ABOVE PRINTING DOES NOT EXCEED THE MINIMUM GOING RATE CHARGED TO ANY OTHER ADVERTISER FOR THE SAME PUBLICATION, SET IN THE SAME SIZE TYPE AND PUBLISHED FOR THE SAME NUMBER OF INSERTIONS.

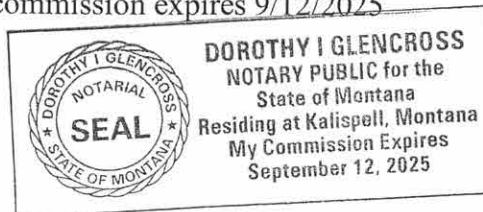
Darlene TrewEEK

Subscribed and sworn to  
Before me this Aug 27, 2024

Dorothy I. Glencross

Dorothy I. Glencross

Notary Public for the State of Montana  
Residing in Kalispell  
My commission expires 9/12/2025



**Resolution 2041**

**A RESOLUTION OF THE CITY COUNCIL OF LIBBY MONTANA TO AUTHORIZE SUBMISSION OF CDBG APPLICATION**

**WHEREAS**, the City of Libby is applying to the Montana Department of Commerce for financial assistance from the Community Development Block Grant Program (CDBG) to replace Montana Ave Lift Station; and

**WHEREAS**, the City of Libby has the legal jurisdiction and authority to construct, finance, operate, and maintain the Montana Ave Lift Station.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The City of Libby agrees to comply with all applicable parts of Title I of the Housing and Community Development Act of 1974, as amended, which have not been cited herein, as well as with other applicable federal laws and regulations, and all state laws and regulations and the requirements described in the CDBG Community and Public Facilities Application Guidelines and those that are described in the CDBG Grant Administration Manual.
2. The City of Libby commits to provide the amount of matching funds as proposed in the CDBG Community and Public Facilities application.
3. Peggy Williams, Mayor, is authorized to submit this application to the Montana Department of Commerce, on behalf of City of Libby, to act on its behalf and to provide such additional information as may be required.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LIBBY, MONTANA**, on this 16th day of September 2024.

By: \_\_\_\_\_  
Peggy Williams, Mayor

Attest: \_\_\_\_\_  
Leann Monigold, Clerk/Treasurer

Local Government's DUNS Number: \_\_\_\_\_

## MONTANA CDBG CERTIFICATION FOR APPLICATION

### ***The Applicant (City of Libby) hereby certifies that:***

It will comply with all requirements established by the Montana Department of Commerce (Commerce) and applicable state laws, regulations, and administrative procedures and accept all Montana Community Development Block Grant (CDBG) program requirements.

It accepts the terms, conditions, selection criteria, and procedures established by the CDBG program and expressly waives any statutory or common law right it may have to challenge the legitimacy and propriety of these terms, conditions, criteria, and procedures in the event that it is not selected for an award of CDBG funds.

### National Objective

It will complete a project that meets the benefit to low- and moderate- income (LMI) national objective, by serving no less than 51% of LMI residents as part of the project activities.

### State Objectives

It will complete project activities that meet one or more of the goals and objectives established in the most current version of the Montana Consolidated Plan.

Goals of the HUD programs administered by the State of Montana are:

- *Providing decent housing* by obtaining appropriate housing for homeless persons and assisting those at risk of homelessness; preserving the affordable housing stock; increasing the availability of permanent affordable housing, without discrimination; increasing the supply of supportive housing for persons with special needs; and providing affordable housing near job opportunities.
- *Providing suitable living environments* by improving the safety and livability of neighborhoods; improving access to quality facilities, infrastructure, and services; reducing the isolation of income groups within communities through de-concentration of low-income housing; revitalizing deteriorating neighborhoods; restoring and preserving properties of special historic architectural or aesthetic value; and conserving energy resources.
- *Expanding economic opportunities* by creating and retaining jobs; establishing, stabilizing, and expanding small businesses; providing public employment services; encouraging the employment of low-income persons in projects funded under this Plan; providing reasonable mortgage financing rates without discrimination; providing access to capital and credit for development activities that promote long-term economic and social viability of the community; and reducing generational poverty of those living in publicly assisted housing by providing empowerment and self-sufficiency opportunities.

The objectives and outcomes of the Montana Consolidated Plan are:

#### ***1. Support existing Montana communities:***

- a. Target funding toward existing communities to increase community revitalization, improve the efficiency of public works investments, and safeguard rural landscapes and natural resources;

- b. Encourage appropriate and comprehensive planning, market studies, preliminary architectural reports, and other studies or plans that support the sustainability of local communities, affordable housing, public works investments, vital employment centers, and the environment;
- c. Enhance the unique and resilient characteristics of all communities by investing in healthy, safe, and walkable neighborhoods—rural, urban, or suburban;
- d. Encourage the rehabilitation of existing rental and owner-occupied homes, particularly for those with special needs and the elderly;
- e. Encourage the development and rehabilitation of community facilities and services located within walkable neighborhoods and/or served by public transportation systems, particularly for those with special needs and the elderly.

*2. Invest in vital public infrastructure:*

- a. Encourage appropriate and comprehensive pre-development planning activities for public infrastructure, including asset management, needs analysis, preliminary engineering and/or architectural reports, and other studies or plans;
- b. Provide funding opportunities to improve the safety and efficiency of public infrastructure, promote healthy, safe, and walkable neighborhoods, and safeguard the environment; and
- c. Provide funding opportunities to serve eligible Montanans, particularly those special needs and elderly populations, with safe, efficient public infrastructure.

*3. Enhance Montana’s economic competitiveness:*

- a. Provide reliable and timely access to employment centers, educational opportunities, services and other basic needs by workers as well as expanded business access to markets;
- b. Support comprehensive planning for downtown revitalization, business development, and other studies or plans to attract and retain talent in Montana communities;
- c. Provide job opportunities to eligible Montanans to strengthen communities within the state;
- d. Encourage activities that support and strengthen new and existing businesses, particularly those located within traditional downtown business centers comprising a mix of businesses, housing, and services;
- e. Encourage mixed-use development that contributes to broader revitalization efforts in Montana communities; and
- f. Seek opportunities to achieve multiple economic development goals, such as removing barriers to collaboration, leveraging multiple funding sources, and increasing energy efficiency, through a single investment.

*4. Promote equitable, affordable housing in Montana*

- a. Expand location- and energy-efficient housing choices for people of all ages, incomes, races and ethnicities to increase mobility and lower the combined cost of housing and transportation;
- b. Encourage housing activities that incorporate energy-efficient design to help advance solar deployment and other on-site renewable energy installations in affordable housing that is aligned with the Federal Renewable Energy Target;
- c. Encourage activities to acquire and/or construct new affordable housing for homeownership or rental in areas where existing investment in infrastructure, facilities, and services leverages multiple economic, environmental, and community objectives;
- d. Encourage appropriate and comprehensive planning, market studies, preliminary architectural reports, and other studies or plans in support of the efficient construction of affordable housing;
- e. Encourage financial mechanisms that increase homeownership opportunities and provide rental assistance to eligible Montanans, particularly those with special needs and the elderly.

*5. Reduce homelessness in Montana:*

- a. Encourage activities that address the housing needs of homeless Montanans and/or those at risk of homelessness;
- b. Encourage activities that increase the level of assistance programs to homeless Montanans and/or those at risk of homelessness, with the goal of achieving stable and sustainable housing; and
- c. Encourage the development and rehabilitation of non-rental facilities for the shelter of temporarily homeless Montanans.

#### ACQUISITION, DISPLACEMENT AND RELOCATION

It will minimize displacement as a result of activities assisted with CDBG funds and assist persons actually displaced.

It will comply with:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (The Uniform Act) as amended, and implementing regulations 49 CFR part 24 and the requirements of section 570.496a. These laws and accompanying regulations require the grantee to provide relocation payments and offer relocation assistance to all persons displaced as a result of acquisition of real property for an activity assisted under the CDBG program. Such payments and assistance must be provided in a fair and consistent and equitable manner that ensures that the relocation process does not result in a different or separate treatment of such persons on account of race, color, religion, national origin, sex, source of income, age, handicap, or familial status (families with children). The grantee must assure that, within a reasonable period of time prior to displacement, decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, source of income, age, handicap, or familial status (families with children); and
- The grantee must also inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations of 49 CFR, Part 24, Subpart B, and found in the local government's Anti-displacement and Relocation Assistance Plan.
- The Residential Anti-displacement and Relocation Assistance Plan adopted by the Montana Department of Commerce for the CDBG program and the Anti-displacement and Relocation Assistance Plan adopted by the applicant.

#### *Assessments for Public Improvements*

It will not attempt to recover any capital costs of public improvements assisted with CDBG funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

- a. CDBG funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than CDBG funds; or,
- b. for purposes of assessing any amount against properties owned and occupied by persons of low and moderate income who are not persons of very low income, the applicant certifies that it lacks sufficient CDBG funds to comply with the requirements of clause a., above.

### *Building Standards*

It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under the CDBG program to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117.1R 1971, subject to the exceptions contained in CFR 101-19.604.

It will also comply with the Architectural Barriers Act of 1968 and HUD regulations 24 CFR part 8, "Nondiscrimination Based on Handicap in Federally Assisted Activities of HUD." The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor; and will comply with HUD Cost-Effective Energy Standards, 24 CFR Part 39.

### *Citizen Participation*

It will comply with the detailed Citizen Participation Plan adopted by Commerce for the CDBG program (see [https://commerce.mt.gov/\\_shared/ConPlan/docs/2020/2020-2024-Appendix-A-CPP.pdf](https://commerce.mt.gov/_shared/ConPlan/docs/2020/2020-2024-Appendix-A-CPP.pdf)).

## CIVIL RIGHTS, EQUAL OPPORTUNITY, FAIR HOUSING REQUIREMENTS

### *Civil Rights*

It will comply with Title VII of the Civil Rights Act of 1964 (42 U.S.C. d et seq.), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied in the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

### *Equal Opportunity*

It will comply with:

- Section 109 of the Housing and Community Development Act of 1974 as amended, and the regulations issued pursuant thereto (24 CFR 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under the Act;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.). The act provides that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance;
- Section 504 of the Rehabilitation Act of 1973, amended (29 U.S.C. 794). The act provides that no otherwise qualified individual shall, solely, by reason of his or her disability, be excluded from



participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds;

- Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 170/u) (24 CFR Part 135). Section 3 of the Housing and Urban Development Act of 1968 requires, in connection with the planning and carrying out of any project assisted under the Act, to the greatest extent feasible, opportunities for training and employment be given to lower-income persons residing within the unit of local government or the non-metropolitan county in which the project is located, and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part, by persons residing in the project area. The grantee must assure good faith efforts toward compliance with the statutory directive of Section 3; and
- Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60) prohibit a CDBG recipient and subcontractors, if any, from discriminating against any employee or applicant for employment because of race, color, religion, sex or national origin. The grantee and subcontractors, if any, must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action must include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The grantee and subcontractors must post in conspicuous places, available to employees and applicants for employment, notices to be provided setting for the provisions of this nondiscrimination clause. For contracts over \$10,000 the grantee or subcontractors will send to each applicable labor union a notice of the above requirements, the grantee and subcontractors will comply with relevant rules, regulations and orders of the U.S. Secretary of Labor. The grantee or subcontractors must make their books and records available to State and federal officials for purposes of investigation to ascertain compliance.

### *Fair Housing*

It will affirmatively further fair housing and will comply with:

- Title VIII of the Civil Rights Act of 1968 (also known as The Fair Housing Act) (42 U.S.C. 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988 and the regulations issued pursuant thereto. The law states that it is the policy of the United States prohibiting any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, disability, or familial status. CDBG grantees must also administer programs and activities relating to housing and community development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII; and
- Executive Order 11063, as amended by Executive Order 12259, requires CDBG recipients to take all actions necessary and appropriate to prevent discrimination because of race, color, religion, creed, sex or national origin; in the sale, leasing, rental and other disposition of residential property and related facilities (including land to be developed for residential use); or in the use or occupancy thereof if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants or contributions from the federal government.

### *Prohibition Against Discrimination on Basis of Religion*

It will comply with section 109(a) of the Housing and Community Development Act that prohibits discrimination on the basis of religion or religious affiliation. No person will be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds on the basis of his or her religion or religious affiliation.

### *Prohibition Against Excessive Force*

It will, if awarded CDBG funds, adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 104(1) of the Housing and Community Development Act, as amended.

### *ADA Compliance*

It will do a self-assessment of impediments to accessibility in compliance with the Americans with Disabilities Act (ADA) of 1990. Grantees are required to find a means of making CDBG program activities and services accessible to persons with disabilities; to review their communities for impediments to disabled citizens; and develop a plan to address those impediments.

### CONFLICT OF INTEREST

It will comply with the provisions of 24 CFR 570.611 and with sections 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, (as applicable) regarding the avoidance of conflict of interest.

### ENVIRONMENTAL REQUIREMENTS

#### *Air Quality*

It will comply with the Clean Air Act (42 U.S.C. 7401, et seq.) which prohibits engaging in, supporting in any way or providing financial assistance for, licensing or permitting, or approving any activity which does not conform to the state implementation plan for national primary and secondary ambient air quality standards.

#### *Environmental Impact*

It will comply with:

- Section 104(f) of the Housing and Community Development Act of 1974, as amended through 1981. This section expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act be most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purpose of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to Section 104(f) of the Act and contained in 24 CFR Part 58; and
- The National Environmental Policy Act of 1969 (42 U.S.C. Section 4321, et seq. and 24 CFR Part 58). The purpose of this Act is to attain the widest use of the environment without degradation, risk to health or safety or other undesirable and unintended consequences. Environmental review procedures are a necessary part of this process. Pursuant to these provisions, the grantee must

also submit environmental certifications to the Department of Commerce when requesting that funds be released for the project. The grantee must certify that the proposed project will not significantly impact the environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

Its chief executive officer or other officer of the applicant approved by the state:

1. consents to assume the status of responsible federal official under the National Environmental Policy Act of 1969 (NEPA) and other provisions of federal law, as specified in 24 CFR Part 58, which further the purposes of NEPA, insofar as the provisions of such federal law apply to the CDBG program; and
2. is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

#### *EPA List of Violating Facilities*

It will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities and that it will notify the Department of Commerce of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by EPA.

#### *Farmlands Protection*

It will comply with the Farmlands Protection Policy Act of 1981 (7 U.S.C. 4202, et seq.) and any applicable regulations (7 CFR Part 658) which established compliance procedures for any federally assisted project which will convert farmlands designated as prime, unique or statewide or locally important, to non-agricultural uses.

#### *Floodplain Management and Wetlands Protection*

It will comply with:

- the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;
- Executive Order 11988, May 24, 1978: Floodplain Management (42 F.R. 26951, et seq.). The intent of this Executive Order is to (1) avoid, to the extent possible, adverse impacts associated with the occupancy and modification of floodplain and (2) avoid direct or indirect support of floodplain development wherever there is a practical alternative. If a grantee proposes to conduct, support or allow an action to be located in the floodplain, the grantee must consider alternatives to avoid adverse effects and incompatible involvement in the floodplains. If siting in a floodplain is the only practical alternative, the grantee must, prior to taking any action: (1)

design or modify its actions in order to minimize a potential harm to the floodplain; and (2) prepare and circulate a notice containing an explanation of why the action is proposed to be located in a floodplain; and

- Executive Order 11990, May 24, 1977: Protection of Wetlands (42 F.R. 26961, et seq.). The intent of this Executive Order is to avoid adverse impacts associated with the destruction or modification of wetlands and direct or indirect support of new construction in wetlands, wherever there is a practical alternative. The grantee must avoid undertaking or providing assistance for new construction located in wetlands unless there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands which may result from such use.

#### *Historic Preservation*

It will comply with:

- Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, as amended) through completion of the procedures outlined in 36 CFR 800 and 36 CFR 63. Compliance with these procedures should include:
  1. consulting with the State Historic Preservation Office (SHPO) to identify properties listed in or eligible for inclusion in the National Register of Historic Places that exist with a proposed CDBG project's area of potential environmental impact, and/or to determine the need for professional archaeological, historical, or architectural inventory of potentially affected properties to determine whether they would qualify for register listing; and
  2. consulting, with the SHPO and THPO, Keeper of the National Register of Historic Places, and the Advisory Council on Historic Preservation to evaluate the significance of historic or prehistoric properties which could be affected by CDBG work and to determine how to avoid or mitigate adverse effects to significant properties from project work.

#### *Lead-Based Paint*

It will comply with current requirements of Title X of the Residential Lead Based Paint Hazard Reduction Act of 1992. Both Commerce and DPHHS provide education and information on LBP hazards to parents, families, healthcare providers, grant recipients, and contractors. Commerce requires that any contractor or subcontractor engaged in renovation, repair and paint activities that disturb lead-based paint in homes, child and care facilities built before 1978 must be certified and follow specific work practices to prevent lead contamination. In addition to complying with Title X, UPCS inspections will be performed at rental properties assisted with HTF, HOME, Section 8, and other public rental properties throughout the state.

#### *Noise, Facility Siting*

It will comply with HUD Environmental Standards (24 CFR, Part 51, Environmental Criteria and Standards and 44 F.R. 40860-40866, July 12, 1979) which prohibit HUD support for most new construction of noise-sensitive uses is prohibited in general for projects with unacceptable noise exposures is discouraged for projects with normally unacceptable noise exposure. Additionally, projects may not be located near facilities handling materials of an explosive or hazardous nature, or in airport clear zones.

#### *Solid Waste*

It will comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.). The purpose of this Act is to promote the protection of health and the environment and to conserve valuable material and energy resources.

#### *Water Quality*

It will comply with:

- the Safe Drinking Water Act of 1974 (42 U.S.C. Section 201, 300(f) et seq. and U.S.C. Section 349), as amended, particularly Section 1424(e) (42 U.S.C. Section 300H-303(e)) which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area; and
- the Federal Water Pollution Control Act of 1972, as amended, including the Clear Water Act of 1977, Public Law 92-212 (33 U.S.C. Section 1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.

#### *Wildlife*

It will comply with:

- the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The intent of this Act is to ensure that all federally assisted projects seek to preserve endangered or threatened species. Federally authorized and funded projects must not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of habitat of such species which is determined by the U.S. Department of the Interior, after consultation with the state, to be critical; and
- the Fish and Wildlife Coordination Act of 1958, as amended, (U.S.C. 661 et seq.) which requires that wildlife conservation receives equal consideration and is coordinated with other features of water resource development programs.

#### *Wild and Scenic Rivers*

It will comply with the Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271, et seq.). The purpose of this Act is to preserve selected rivers or sections of rivers in their free-flowing condition, to protect the water quality of such rivers and to fulfill other vital national conservation goals. Federal assistance by loan, grant, license or other mechanism may not be provided to water resources construction projects that would have a direct and adverse effect on any river included or designated for study or inclusion in the National Wild and Scenic River System.

#### FINANCIAL MANAGEMENT

It will comply with the applicable requirements of:

- 2 CFR part 200. It will maintain a financial management system that includes records to document compliance with Federal and State laws and regulations and the terms and

conditions of the HOME program. The records must be sufficient to allow for the preparation of reports required by general and program-specific terms and conditions and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to Federal statutes and program requirements.

- 24 CFR part 570, subpart J. It will comply with the program administration requirements relating to the following: disbursement of funds, program income, uniform administrative requirements, cost principles, audits, recordkeeping, property management, and performance reports
- The Single Audit Act of 1984, as amended by the Single Audit Act of 1996 ( the "Single audit Act Amendments") which establishes criteria for determining the scope and content of audits and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations", revised June 24, 1997. (OMB Circular A-133.)

It will promptly refund to Commerce any CDBG funds determined by an audit to have been spent in an unauthorized or improper manner or for ineligible activities.

It will give Commerce, the Montana Legislative Auditor, HUD, and the Comptroller General, through any authorized representatives, access to and the right to examine all records, books, papers, or documents related to the grant.

#### *Labor Standards*

It will comply with:

- Section 110 of the Housing and Community Development Act of 1975, as amended, 24 CFR 570.605, and State regulations regarding the administration and enforcement of labor standards. Section 110 requires that all laborers and mechanics employed by contractors or subcontractors on construction work assisted under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276-1- 276a-5). By reason of the foregoing requirement the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to rehabilitation of residential property only if such property is designed for residential use for eight or more families;
- Davis-Bacon Act, as amended (40 U.S.C. et seq.), Section 2; June 13, 1934, as amended (48 Stat. 948.40 U.S.C. 276(c)), popularly known as the Copeland Anti-Kickback Act. The Act mandates that all laborers and mechanics be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account except "permissible" salary deductions, the full amounts due at the time of payments, computed at wage rates not less than those contained in the wage determination issued by the U.S. Department of Labor. Weekly compliance statements and payrolls are required to be submitted to the federally funded recipient by the contractor;
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.). According to the Act, no contract work may involve or require laborers or mechanics to work in excess of eight hours in a calendar day, or in excess of 40 hours in a work week, unless compensation of not less than one and one-half times the basic rate is paid for the overtime hours. If this Act is violated, the contractor or subcontractor is liable to any affected employee for unpaid damages as well as to

the United States for liquidated damages; and

- Federal Fair Labor Standards Act, (29 U.S.C.S. 201 et seq.).The act requires that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed workweek.

### *Legal Authority*

It possesses legal authority to apply for the grant and to execute the proposed project under Montana law and, if selected to receive a CDBG grant, will make all efforts necessary to assure timely and effective implementation of the project activities described in the submitted application.

### *Lobbying*

It certifies that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influencing an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### *Political Activity*

It will comply with the Hatch Act Modernization Act of 2012, as follows:

- a. If an employee's salary is paid 100%, directly or indirectly, by loans or grants made by the United States or a Federal agency, that employee may not run for partisan office.
- b. The Hatch Act Modernization Act did not change the federal Hatch Act's prohibitions on coercive conduct or misuse of official authority for partisan purposes. A state or local employee is still covered by these prohibitions if the employee works in connection with a program financed in

whole or in part by federal loans or grants, even if the connection is relatively minor. A covered employee who runs for office would violate the Hatch Act if the employee:

- o uses federal or any other public funds to support his own candidacy;
- o uses his state or local office to support his candidacy, including by using official email, stationery, office supplies, or other equipment or resources; or
- o asks subordinates to volunteer for his campaign or contribute to the campaign.

*Procurement*

Consulting Services will be procured in a manner that provides fair and unbiased, full and open competition, without conflicts of interest.

Signed: \_\_\_\_\_

Name:     Peggy Williams    

Title:     Mayor    

Date: \_\_\_\_\_

DUNS Number: \_\_\_\_\_

EIN Number:     81-6011285





FS Agreement No. 24-PA-11011400-013

Cooperator Agreement No. \_\_\_\_\_

**PARTICIPATING AGREEMENT  
Between The  
CITY OF LIBBY  
And The  
USDA, FOREST SERVICE  
KOOTENAI NATIONAL FOREST**

This PARTICIPATING AGREEMENT is hereby entered into by and between the City of Libby, hereinafter referred to as “the City,” and the United States Department of Agriculture (USDA), Forest Service, Kootenai National Forest, hereinafter referred to as the “U.S. Forest Service,” under the authority: Cooperative Funds and Deposits Act of December 12, 1975, Pub.L. 94-148, 16 U.S.C. 565a1 – a3, as amended.

Background: The proposed Flower Creek Streambank Stabilization project is designed to stabilize up to five actively eroding stream banks in Flower Creek. The eroding banks are located between the City of Libby’s dams operated for the municipal water system and treatment facility. The City has expressed concern with excessive sediment entering their water treatment facility and has worked with the U.S. Forest Service and State of Montana to identify contributing sources and projects that would help reduce the amount of sediment reaching their water treatment facilities. In 2009, the U.S. Forest Service watershed staff investigated this stretch of Flower Creek and developed a plan of action to address these failing banks. This project was put on hold when the City moved forward with upgrading their upper dam. In 2021, the City of Libby developed a Source Water Protection Plan to “strive to establish new or support existing collaborations with various entities and then work together to incorporate management strategies to reach a common goal of protecting the community’s source water.” One of the action items that was identified within the plan was to revisit the 2009 stream bank stabilization project.

This agreement is funded by the Inflation Reduction Act.

Title: Flower Creek Bank Stabilization

**I. PURPOSE:**

The purpose of this agreement is to document the cooperation between the parties to stabilize the Flower Creek stream banks in accordance with the following provisions and the hereby incorporated Financial Plan, attached as Exhibit A.

**II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:**



This project benefits both the Kootenai National Forest as well as the City of Libby, Montana. Among many watershed improvement directives, the Kootenai National Forest Land Management Plan (2017) has goals to “maintain or improve watershed conditions in order to provide water quality, water quantity and stream channel conditions that support ecological functions and beneficial uses.” This project will improve channel conditions as well as water quality. The Cities’ interest in the project is due to the proximity of the intake for their municipal water treatment facility. The intake is less than half a mile downstream from the project area. The large amount of sediment produced from the eroding banks overwhelm the City’s ability to treat water, in turn causing boil orders for the City’s water distribution.

The City would like to see a reduction in sediment and increase the ability for them to treat water. The U.S. Forest Service will help to improve watershed conditions, and the City will improve their water treatment capacity.

In consideration of the above premises, the parties agree as follows:

### **III. THE CITY SHALL:**

- A. LEGAL AUTHORITY. The City shall have the legal authority to enter into this agreement, and the institutional, managerial, and financial capability to ensure proper planning, management, and completion of the project, which includes funds sufficient to pay the non-Federal share of project costs, when applicable.
- B. Rent appropriate construction equipment with U.S. Forest Service provided funds.
- C. Provide a qualified operators to construct project to design specifications.
- D. Be responsible for renting, operating and providing equipment needed for project construction.
- E. Perform in accordance with the Financial Plan, attached as Exhibit A.

### **IV. THE U.S. FOREST SERVICE SHALL:**

- A. PAYMENT/REIMBURSEMENT. The U.S. Forest Service shall reimburse the City for the U.S. Forest Service's share of actual expenses incurred, not to exceed \$65,000.00, as shown in the Financial Plan. In order to approve a Request for Reimbursement, the U.S. Forest Service shall review such requests to ensure payments for reimbursement are in compliance and otherwise consistent with the terms of the agreement. The U.S. Forest Service shall make payment upon receipt of the City’s monthly invoice. Each invoice from the City shall display the total project costs for the billing period, separated by U.S. Forest Service and the City’s share. In-kind contributions must be displayed as a separate line item and must not be included in the total project costs available for reimbursement. The final invoice must display



the City’s full match towards the project, as shown in the financial plan, and be submitted no later than 120 days from the expiration date.

Each invoice must include, at a minimum:

1. The City’s name, address, and telephone number.
2. U.S. Forest Service agreement number: 24-PA-11011400-013
3. Invoice date.
4. Performance dates of the work completed (start & end).
5. Total invoice amount for the billing period, separated by the U.S. Forest Service and The City share with in-kind contributions displayed as a separate line item.
6. Display all costs, both cumulative and for the billing period, by separate cost element as shown on the financial plan.
7. Cumulative amount of U.S. Forest Service payments to date.
8. Statement that the invoice is a request for payment by “reimbursement”.
9. If using SF-270, a signature is required.
10. Invoice Number, if applicable.

The invoice must be forwarded to:

EMAIL: [SM.FS.ASC\\_GA@USDA.GOV](mailto:SM.FS.ASC_GA@USDA.GOV)

FAX: 877-687-4894

POSTAL: USDA Forest Service  
Budget & Finance - Grants and  
Agreements  
4000 Masthead St, NE  
Albuquerque, NM 87109

Send a copy to: Keith Karoglanian at [keith.karoglanian@usda.gov](mailto:keith.karoglanian@usda.gov)

- B. Provide project design and oversight.
- C. Ensure all permits are in place.
- D. Ensure National Environmental Policy Act (NEPA) requirements are complete.
- E. Perform in accordance with the Financial Plan, attached as Exhibit A.

**V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:**

- A. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.



**Principal Cooperator Contacts:**

<b>Cooperator Project Contact</b>	<b>Cooperator Financial Contact</b>
Samuel Sikes City Administrator 952 E Spruce St Libby, MT 59923 (406) 293-1278 <a href="mailto:city.admin@cityoflibby.com">city.admin@cityoflibby.com</a>	Leann Monigold Clerk/Treasurer PO BOX 1428, 952 E, Spruce St. Libby, MT 59923 (406) 293-2731 x 4103 <a href="mailto:clerk.treasurer@cityoflibby.com">clerk.treasurer@cityoflibby.com</a>

**Principal U.S. Forest Service Contacts:**

<b>U.S. Forest Service Program Manager Contact</b>	<b>U.S. Forest Service Administrative Contact</b>
Keith Karoglanian Hydrologist, Planning Staff Officer 12557 Highway 37 Libby, MT 59923 (406) 283-7567 <a href="mailto:keith.karoglanian@usda.gov">keith.karoglanian@usda.gov</a>	Kim Back Grants Management Specialist 26 Fort Missoula Rd Missoula, MT 59804 406-924-3518 <a href="mailto:kimberly.back@usda.gov">kimberly.back@usda.gov</a>

- B. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the City are sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the agreement.

To the City, at the address shown in the agreement or such other address designated within the agreement.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- C. **PARTICIPATION IN SIMILAR ACTIVITIES.** This agreement in no way restricts the U.S. Forest Service or the City from participating in similar activities with other public or private agencies, organizations, and individuals.
- D. **ENDORSEMENT.** Any of the City’s contributions made under this agreement do not by direct reference or implication convey U.S. Forest Service endorsement of the City's products or activities.



- E. USE OF U.S. FOREST SERVICE INSIGNIA. In order for the City to use the U.S. Forest Service Insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications (Washington Office). A written request will be submitted by the U.S. Forest Service to the Office of Communications Assistant Director, Visual Information and Publishing Services, prior to use of the insignia. The U.S. Forest Service will notify the the City when permission is granted.
- F. NON-FEDERAL STATUS FOR COOPERATOR PARTICIPANTS. The City agree(s) that any of the City's employees, volunteers, and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), as the City has hereby willingly agreed to assume these responsibilities.

Further, the City shall provide any necessary training to the City's employees, volunteers, and program participants to ensure that such personnel are capable of performing tasks to be completed. The City shall also supervise and direct the work of its employees, volunteers, and participants performing under this agreement.

- G. NON-FEDERAL STATUS FOR COOPERATOR LIABILITY. The City agree(s) that any of the City's employees and program participants shall not be deemed to be Federal employees for any purposes including Chapter 171 of Title 28, United States Code (Federal Tort Claims Act) and Chapter 81 of Title 5, United States Code (OWCP), and the City hereby willingly agree(s) to assume these responsibilities.

The City agree(s) that, except as otherwise provided in this provision below, of the City's volunteers shall not be deemed to be Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits. When the City's volunteers are performing approved tasks identified under this agreement, the following applies:

1. For the purpose of the tort claim provisions of Title 28 of the United States Code, any of the City's volunteers shall be considered a federal employee.
2. For the purpose of subchapter I of Chapter 81 of Title 5 of the United States Code, relating to compensation to Federal employees for work injuries, the City's volunteers shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply.
3. For the purposes of claims relating to damage to, or loss of, personal property of the City's volunteer incident to volunteer service, a volunteer shall be considered a Federal employee, and the provisions of 31 U.S.C 3721 shall apply.

Further, the City shall provide any necessary training and support to the City's employees, volunteers, and program participants, to ensure that such personnel



are capable of performing tasks to be completed. The City shall also supervise and direct the work of its employees, volunteers, and program participants performing under this Agreement.

- H. MEMBERS OF CONGRESS. Pursuant to 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- I. NONDISCRIMINATION. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, and so forth.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.
- J. ELIGIBLE WORKERS. The City shall ensure that all employees complete the I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). The City shall comply with regulations regarding certification and retention of the completed forms. These requirements also apply to any contract awarded under this agreement.
- K. SYSTEM FOR AWARD MANAGEMENT REGISTRATION REQUIREMENT (SAM). The City shall maintain current organizational information and the original Unique Entity Identifier (UEI) provided for this agreement in the System for Award Management (SAM) until receipt of final payment. This requires annual review and updates, when needed, of organizational information after the initial registration. More frequent review and updates may be required for changes in organizational information or agreement term(s). Any change to the original UEI provided in this agreement will result in termination of this agreement and de-obligation of any remaining funds. For purposes of this agreement, System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a Cooperative. Additional information about registration procedures may be found at the SAM Internet site at [www.sam.gov](http://www.sam.gov).
- L. STANDARDS FOR FINANCIAL MANAGEMENT.

### **1. Financial Reporting**



The City shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

## **2. Accounting Records**

The City shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the agreement, authorizations, obligations, unobligated balances, assets, outlays, and income.

## **3. Internal Control**

The City shall maintain effective control over and accountability for all U.S. Forest Service funds, real property, and personal property assets. The City shall keep effective internal controls to ensure that all United States Federal funds received are separately and properly allocated to the activities described in the agreement and used solely for authorized purposes.

## **4. Source Documentation**

The City shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and contract documents. These documents must be made available to the U.S. Forest Service upon request.

- M. INDIRECT COST RATES- PARTNERSHIP. Indirect costs are approved for reimbursement or as a cost-share requirement and have an effective period applicable to the term of this agreement.
1. If the City has never received or does not currently have a negotiated indirect cost rate, they are eligible for a de minimis indirect cost rate up to 10 percent of modified total direct costs (MTDC). MTDC is defined as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award).
  2. For rates greater than 10 percent and less than 25 percent, the City shall maintain documentation to support the rate. Documentation may include, but is not limited to, accounting records, audit results, cost allocation plan, letter of indirect cost rate approval from an independent accounting firm, or other Federal agency approved rate notice applicable to agreements.
  3. For a rate greater than 25 percent, the U.S. Forest Service may require that the City request a federally approved rate from the City's cognizant audit agency no later than 3 months after the effective date of the agreement. The City will be reimbursed for indirect costs or allowed to cost-share at the rate reflected in the



agreement until the rate is formalized in the negotiated indirect cost rate (NICRA) at which time, reimbursements for prior indirect costs or cost-sharing may be subject to adjustment.

4. Failure to provide adequate documentation supporting the indirect cost rate, if requested, could result in disallowed costs and repayment to the U.S. Forest Service.
- N. OVERPAYMENT. Any funds paid to the City in excess of the amount entitled under the terms and conditions of this agreement constitute a debt to the Federal Government. The following must also be considered as a debt, or debts owed by the City to the U.S. Forest Service:

- Any interest or other investment income earned on advances of agreement funds; or
- Any royalties or other special classes of program income which, under the provisions of the agreement, are required to be returned.

If this debt is not paid according to the terms of the bill for collection issued for the overpayment, the U.S. Forest Service may reduce the debt by:

1. Making an administrative offset against other requests for reimbursement.
2. Withholding advance payments otherwise due to the City.
3. Taking other action permitted by statute (31 U.S.C. 3716 and 7 CFR, Part 3, Subpart B).

Except as otherwise provided by law, the U.S. Forest Service may charge interest on an overdue debt.

- O. AGREEMENT CLOSE-OUT. Within 120 days after expiration or notice of termination The City shall close out the agreement.

Any unobligated balance of cash advanced to the City must be immediately refunded to the U.S. Forest Service, including any interest earned in accordance with 7CFR3016.21/2CFR 215.22.

Within a maximum of 120 days following the date of expiration or termination of this agreement, all financial performance and related reports required by the terms of the agreement must be submitted to the U.S. Forest Service by the City.

If this agreement is closed out without audit, the U.S. Forest Service reserves the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

- P. FINANCIAL STATUS REPORTING A Federal Financial Report, form SF-425 (and Federal Financial Report Attachment, SF-425A, if required for reporting multiple





awards), must be submitted quarterly. These reports are due 30 days after the reporting period ending March 31, June 30, September 30, December 31. The final SF-425 (and SF-425A, if applicable) must be submitted either with the final payment request or no later than 90 days from the expiration date of the award. These forms may be found at <https://www.grants.gov/forms/forms-repository/post-award-reporting-forms>

- Q. **PROGRAM MONITORING AND PROGRAM PERFORMANCE REPORTS** The parties to this agreement shall monitor the performance of the agreement activities to ensure that performance goals are being achieved.

The cooperator may use whatever format it chooses for reporting performance, including Forest Service form SF-1500-23. Notwithstanding, performance reports must contain information on the following:

1. A comparison of actual accomplishments to the goals established for the period. Where the output of the project can be readily expressed in numbers, a computation of the cost per unit of output, if applicable.
2. Reason(s) for delay if established goals were not met.
3. Project activities in the upcoming quarter/reporting period.
4. Additional pertinent information.

The Cooperator shall submit quarterly performance reports to the Forest Service Program Manager. The report is due 30 days after the reporting period ending March 31, June 30, September 30, December 31. The final performance report must be submitted either with the Cooperator's final payment request, or separately, but no later than 120 days from the expiration date of the agreement.

- R. **JUSTICE 40 INITIATIVE**. Executive Order (EO) 14008, Tackling the Climate Crisis at Home and Abroad, was signed on January 27, 2021. This EO commits federal agencies to providing 40% of federal benefits to disadvantaged communities. When the cooperator is considering a subaward or contract to be executed under this agreement, the cooperator may consider the requirements of EO 14008, section 223, OMB M-21-28 and OMB-23-09.
- S. **RETENTION AND ACCESS REQUIREMENTS FOR RECORDS**. The City shall retain all records pertinent to this agreement for a period of no less than 3 years from the expiration or termination date. As used in this provision, records include books, documents, accounting procedures and practice, and other data, regardless of the type or format. The City shall provide access and the right to examine all records related to this agreement to the U.S. Forest Service, Inspector General, or Comptroller General or their authorized representative. The rights of access in this section must not be limited to the required retention period but must last as long as the records are kept.



If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the 3-year period, the records must be kept until all issues are resolved, or until the end of the regular 3-year period, whichever is later.

Records for nonexpendable property acquired in whole or in part, with Federal funds must be retained for 3 years after its final disposition.

- T. FREEDOM OF INFORMATION ACT (FOIA). Public access to grant or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552). Requests for research data are subject to 2 CFR 215.36.

Public access to culturally sensitive data and information of Federally recognized Tribes may also be explicitly limited by P.L. 110-234, Title VIII Subtitle B §8106 (2008 Farm Bill).

- U. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All Cooperators, their Employees, Volunteers, and Contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- V. FUNDING EQUIPMENT. Federal funding under this agreement is not available for reimbursement of the City's purchase of equipment. Equipment is defined as having a fair market value of \$5,000 or more per unit and a useful life of over one year.
- W. PROPERTY IMPROVEMENTS. Improvements placed by the City on National Forest System land at the direction or with the approval of the U.S. Forest Service becomes property of the United States. These improvements are subject to the same regulations and administration of the U.S. Forest Service as would other national forest improvements of a similar nature. No part of this agreement entitles the City to any interest in the improvements, other than the right to use them under applicable U.S. Forest Service Regulations.
- X. CONTRACT REQUIREMENTS. Any contract under this agreement must be awarded following the the City's established procurement procedures, to ensure free and open competition, and avoid any conflict of interest (or appearance of conflict). The City shall maintain cost and price analysis documentation for potential U.S. Forest Service review. The City is/are encouraged to utilize small businesses, minority-owned firms, and women's business enterprises.



- Y. MINIMUM WAGE AND PAID SICK LEAVE REQUIREMENTS. Executive Order 14026, Increasing the Minimum Wage for Federal Contractors, and its implementing regulations, including the federal contractor minimum wage clause at 29 CFR Part 23, Appendix A, and Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, and its implementing regulations, including the federal contractor paid sick leave clause at 29 CFR Part 13, Appendix A, apply to the Cooperator and any subcontractors under this agreement. These regulatory requirements are incorporated by reference into this agreement as if fully set forth in this agreement.
- Z. REMEDIES FOR COMPLIANCE RELATED ISSUES. If the City materially fail(s) to comply with any term of the agreement, whether stated in a Federal statute or regulation, an assurance, or the agreement, the U.S. Forest Service may take one or more of the following actions:
1. Temporarily withhold cash payments pending correction of the deficiency by the City or more severe enforcement action by the U.S. Forest Service;
  2. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;
  3. Wholly or partly suspend or terminate the current agreement for the City's program;
  4. Withhold further awards for the program, or
  5. Take other remedies that may be legally available, including debarment procedures under 2 CFR part 417.
- AA. TERMINATION BY MUTUAL AGREEMENT. This agreement may be terminated, in whole or part, as follows:
1. When the U.S. Forest Service and the City agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
  2. By 30 days written notification by the City to the U.S. Forest Service setting forth the reasons for termination, effective date, and in the case of partial termination, the portion to be terminated. If the U.S. Forest Service decides that the remaining portion of the agreement will not accomplish the purposes for which the agreement was made, the U.S. Forest Service may terminate the agreement in its entirety.

Upon termination of an agreement, the City shall not incur any new obligations for the terminated portion of the agreement after the effective date, and shall cancel as many outstanding obligations as possible. The U.S. Forest Service shall allow full credit to the City for the U.S. Forest Service share of obligations that cannot be



cancelled and were properly incurred by the City up to the effective date of the termination. Excess funds must be refunded within 60 days after the effective date of termination.

- BB. ALTERNATE DISPUTE RESOLUTION – PARTNERSHIP AGREEMENT. In the event of any issue of controversy under this agreement, the parties may pursue Alternate Dispute Resolution procedures to voluntarily resolve those issues. These procedures may include, but are not limited to conciliation, facilitation, mediation, and fact finding.
- CC. DEBARMENT AND SUSPENSION. The City shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should the City or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- DD. PROHIBITION AGAINST INTERNAL CONFIDENTIAL AGREEMENTS. All non federal government entities working on this agreement will adhere to the below provisions found in the Consolidated Appropriations Act, 2016, Pub. L. 114-113, relating to reporting fraud, waste and abuse to authorities:
- (a) The recipient may not require its employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  - (b) The recipient must notify its employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.
  - (c) The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  - (d) If the Government determines that the recipient is not in compliance with this award provision, it:



- (1) Will prohibit the recipient's use of funds under this award, in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016, (Pub. L. 114-113) or any successor provision of law; and
- (2) May pursue other remedies available for the recipient's material failure to comply with award terms and conditions.

EE. MODIFICATIONS. Modifications within the scope of this agreement must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 90 days prior to implementation of the requested change. The U.S. Forest Service is not obligated to fund any changes not properly approved in advance.

FF. COMMENCEMENT/EXPIRATION DATE. This agreement is executed as of the date of the last signature and is effective through December 31, 2028 at which time it will expire. The expiration date is the final date for completion of all work activities under this agreement.

GG. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this agreement. In Witness Whereof, the parties hereto have executed this agreement as of the last date written below.

---

Peggy Williams, Mayor Date  
City of Libby

---

CHAD BENSON, Forest Supervisor Date  
U.S. Forest Service, Kootenai National Forest

The authority and format of this agreement have been reviewed and approved for signature.

---

KIMBERLY BACK Date  
U.S. Forest Service Grants Management Specialist



According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

Attachment:

USFS Agreement No.:   
Cooperator Agreement No.:

Mod. No.:

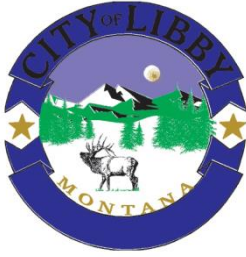
**Note: This Financial Plan may be used when:**  
**(1) No program income is expected and**  
**(2) The Cooperator is not giving cash to the FS and**  
**(3) There is no other Federal funding**

**Agreements Financial Plan (Short Form)**

**Financial Plan Matrix:** Note: All columns may not be used. Use depends on source and type of contribution(s).

COST ELEMENTS	FOREST SERVICE CONTRIBUTIONS		COOPERATOR CONTRIBUTIONS		(e) Total
	(a) Noncash	(b) Cash to Cooperator	(c) Noncash	(d) In-Kind	
Direct Costs					
Salaries/Labor	\$4,494.00	\$0.00	\$8,977.79	\$0.00	\$13,471.79
Travel	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$64,995.00	\$7,650.00	\$0.00	\$72,645.00
Supplies/Materials	\$0.00	\$5.00	\$0.00	\$0.00	\$5.00
Printing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Other					\$0.00
<b>Subtotal</b>	<b>\$4,494.00</b>	<b>\$65,000.00</b>	<b>\$16,627.79</b>	<b>\$0.00</b>	<b>\$86,121.79</b>
Coop Indirect Costs		\$0.00	\$1,662.78		\$1,662.78
FS Overhead Costs	\$719.04				\$719.04
<b>Total</b>	<b>\$5,213.04</b>	<b>\$65,000.00</b>	<b>\$18,290.57</b>	<b>\$0.00</b>	<b>\$88,503.61</b>
<b>Total Project Value:</b>					<b>\$88,503.61</b>

Matching Costs Determination	
Total Forest Service Share = (a+b) ÷ (e) = (f)	(f) 79.33%
Total Cooperator Share (c+d) ÷ (e) = (g)	(g) 20.67%
Total (f+g) = (h)	(h) 100.00%



CITY OF LIBBY

952 E. SPRUCE | POST OFFICE BOX 1428

PHONE 406-293-2731 | FAX 406-293-4090 | WEBSITE: [www.cityoflibby.com](http://www.cityoflibby.com)

September 6, 2024

Davis Surveying, Inc.  
Kenneth Davis  
P.O. Box 896  
Troy, MT 59935

RE: **Tee-Box Estates Minor Subdivision**  
**Tract 1 of C.O.S. 4613, T.30.N., R.31W., Section 15**  
**Lincoln County, Montana**  
**Final Plat Completeness Review**

Dear Mr. Davis:

On July 31, 2024, the Tee-Box Estates final plat application was received by the subdivision administrator and on August 5, 2024 the review fee was received by the City of Libby. An incomplete letter was sent on August 22, 2024. A letter response was received on September 5, 2024 with additional information submitted to the City. The final plat application has been deemed complete. We will work with the City Administrator to schedule this for Council review and approval. You will be notified when the final plat is scheduled for Council review and approval. If you have any questions or concerns regarding this letter, please do not hesitate to contact us at (406)443-3962 or [jfadness@wvcengineering.com](mailto:jfadness@wvcengineering.com).

Sincerely,

A handwritten signature in blue ink that reads "Jeremy Fadness".

Jeremy Fadness, AICP  
Libby Contract Planner

cc: City Administrator

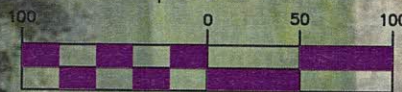


LINCOLN COUNTY, MONTANA  
**AERIAL PHOTO:  
 TEE-BOX ESTATES**

TRACT 1 PER C.O.S. 4613AL

In the NW 1/4, NW 1/4 of Section 15, Twp. 30 N., R. 31 W., P.M.M.  
 For: Ralph J. Kaulzarich & Judy M. Kaulzarich Date: October 2021  
 TOTAL ACREAGE: 2.09 ACRES±  
 RESIDENTIAL LOTS

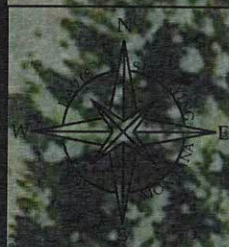
Graphic Scale



1 inch = 100 ft.

C.O.S. 3585  
 BOOK 341 PAGE 202  
 DARRELL & GALE E. SHOEMAKER

BASIS OF BEARING (N89°52'36"E) PER C.O.S. 3585



**DAVIS SURVEYING INC.**  
 TROY, MONTANA [www.davis-surveying.com](http://www.davis-surveying.com) 406.295.5441

DATE: 9/29/21	REV:
DRAWN BY: CTR	
Land Projects 2021	
3031151.cdw	



# A PLAT OF: TEE-BOX ESTATES

TRACT 1 PER C.O.S. 4613AL

In the NE1/4 NW1/4 NW1/4 of Section 15, Twp. 30 N., R. 31 W., P.M.M.  
For: Ralph J. Kauzlarich & Judy M. Kauzlarich

Date: June 2024

TOTAL ACREAGE: 2.09 ACRES±  
RESIDENTIAL LOTS

### SUBDIVISION NOTES:

All lots in this subdivision have existing water and sewer hook-ups provided by the City of Libby and will be exempt from D.E.Q. review pursuant to 76-4-125(1)(d)(i) which states: "as certified pursuant to 76-4-127: new divisions subject to review under the Montana Subdivision and Platting Act;"

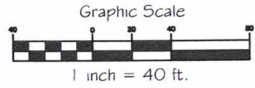
C.O.S. 3585  
BOOK 341 PAGE 202  
DARRELL & GALE E. SHOEMAKER

IRREGULAR PLAT  
NO. 863  
BOOK 338 PAGE 152  
TRAVIS MOHR

FLUNGER CREEK SUB.  
PLAT NO. 6128

LOT 1  
BOOK 352 PAGE 881  
TRAVIS MOHR

LOT 2  
BOOK 323 PAGE 782  
ROGER R. & SANDRA P. WILLIS



### Legend

- ◆ SET 5/8 INCH DIA. REBAR WITH A PLASTIC CAP STAMPED K.E.D. 4975-S
- FOUND 1/2 INCH DIA. PIPE WITH A PLUG STAMPED M.D.L. 4232-S
- FOUND 5/8 INCH DIA. REBAR CAPPED K.E.D. 4975-S
- COMPUTED POINTS
- ( ) RECORD PER C.O.S. 4613
- ⊕ FOUND BLM BRASS CAP
- ⊖ FOUND PIPE

### CERTIFICATE OF SURVEYOR

STATE OF MONTANA  
County of Lincoln

I, Kenneth E. Davis, a registered land surveyor do hereby certify that a survey was made of Tee-Box Estates, a 1st Minor Subdivision, during the month of June 2024, in accordance with the provisions of Section 76-3-201 through 76-3-625 M.C.A. 2021; that the annexed Plat is in accordance with such a survey, that the dimensions of the lots are as shown hereon; and that the said platted area was laid out on the ground according to law.

Dated this \_\_\_ day of \_\_\_\_\_, 2024 A.D.

Kenneth E. Davis Registered Land Surveyor No. 4975-S

## DAVIS SURVEYING INC.

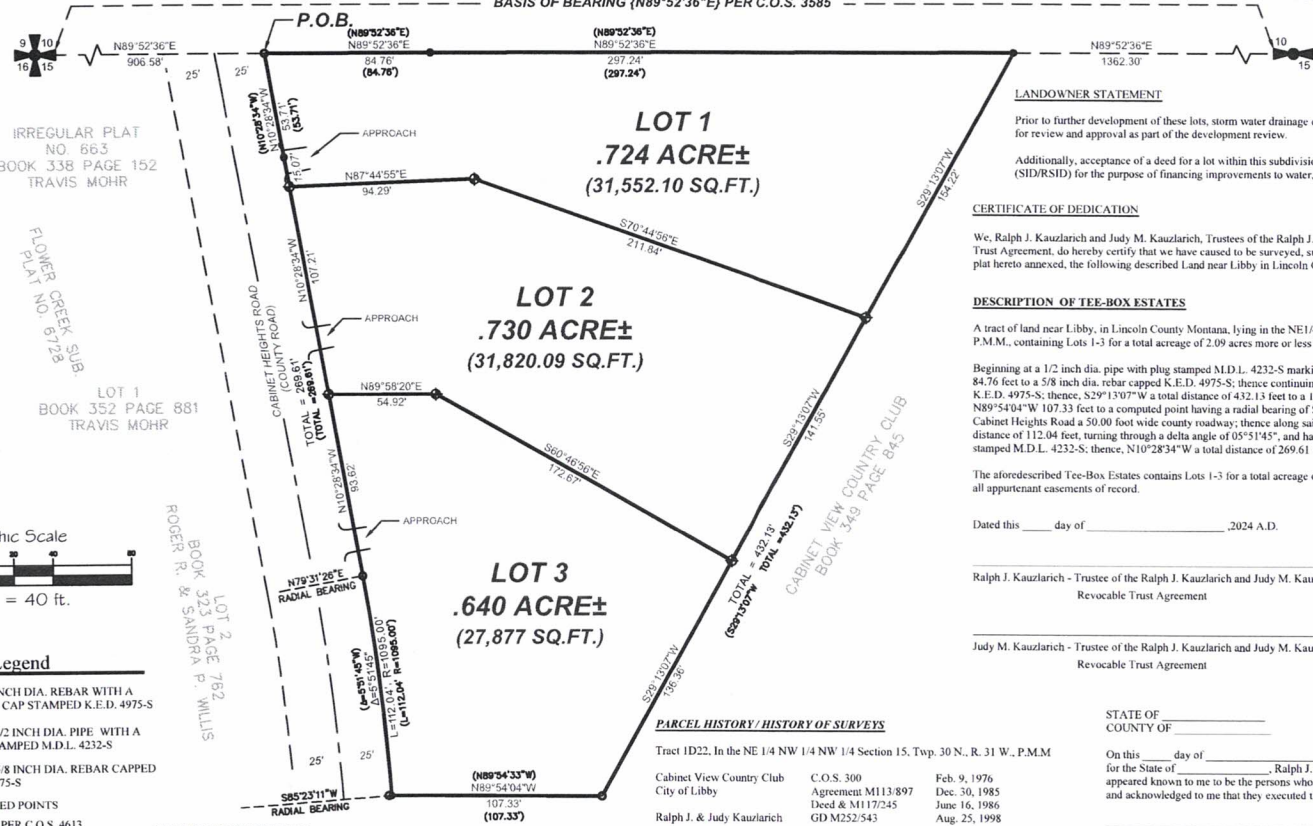
TROY, MONTANA	REV:
DATE: 6/12/24	
DRAWN BY: SM	
Land Projects 2021	
FILE: 130111SL.dwg	

### LEGAL AND PHYSICAL ACCESS

I hereby certify that physical access to all lots within this subdivision is provided by Cabinet Heights Road.

Kenneth E. Davis Registered Land Surveyor No. 4975-S

BASIS OF BEARING (N89°52'36"E) PER C.O.S. 3585



### LANDOWNER STATEMENT

Prior to further development of these lots, storm water drainage design shall be completed and submitted to the City of Libby for review and approval as part of the development review.

Additionally, acceptance of a deed for a lot within this subdivision constitutes assent to a future Special Improvement District (SID/SID) for the purpose of financing improvements to water, sewer, and road improvements as identified for district.

### CERTIFICATE OF DEDICATION

We, Ralph J. Kauzlarich and Judy M. Kauzlarich, Trustees of the Ralph J. Kauzlarich and Judy M. Kauzlarich Revocable Trust Agreement, do hereby certify that we have caused to be surveyed, subdivided and platted into lots as shown by the plat hereto annexed, the following described Land near Libby in Lincoln County, Montana.

### DESCRIPTION OF TEE-BOX ESTATES

A tract of land near Libby, in Lincoln County Montana, lying in the NE1/4 NW1/4 NW1/4 of Section 15, Twp. 30 N., R. 31 W., P.M.M., containing Lots 1-3 for a total acreage of 2.09 acres more or less and more particularly described as follows:

Beginning at a 1/2 inch dia. pipe with plug stamped M.D.L. 4232-S marking the northwest corner of C.O.S. 300; thence, N89°52'36"E 84.76 feet to a 5/8 inch dia. rebar capped K.E.D. 4975-S; thence continuing, N89°52'36"E 297.24 feet to a 5/8 inch dia. rebar capped K.E.D. 4975-S; thence, S29°13'07"W a total distance of 432.13 feet to a 1/2 inch dia. pipe with plug stamped M.D.L. 4232-S; thence, N89°54'04"W 107.33 feet to a computed point having a radial bearing of S85°23'11"W and located on the east right-of-way line of Cabinet Heights Road a 50.00 foot wide county roadway; thence along said east right-of-way line on the arc of a curve to the left, a distance of 112.04 feet, turning through a delta angle of 05°51'45"; and having a radius of 1095.00 feet, to a 1/2 inch dia. pipe with plug stamped M.D.L. 4232-S; thence, N10°28'34"W a total distance of 269.61 feet to the point of beginning.

The aforescribed Tee-Box Estates contains Lots 1-3 for a total acreage of 2.09 acres more or less and is subject to and together with all appurtenant easements of record.

Dated this \_\_\_ day of \_\_\_\_\_, 2024 A.D.

Ralph J. Kauzlarich - Trustee of the Ralph J. Kauzlarich and Judy M. Kauzlarich Revocable Trust Agreement

Judy M. Kauzlarich - Trustee of the Ralph J. Kauzlarich and Judy M. Kauzlarich Revocable Trust Agreement

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_, 2024 A.D., before me, a Notary Public in and for the State of \_\_\_\_\_, Ralph J. Kauzlarich and Judy M. Kauzlarich, personally appeared known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

Notary Public

My Commission Expires \_\_\_\_\_

### TREASURER CERTIFICATION

I hereby certify that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.  
Dated this \_\_\_ day of \_\_\_\_\_, 2024, A.D.

Treasurer Lincoln County, Montana

Steven A. Boyer

Professional Land Surveyor No. 9750LS

### CITY CERTIFICATE OF FINAL PLAT APPROVAL

The Council of the City of Libby, Lincoln County, Montana does hereby certify that it has examined this subdivision plat and having found the same to conform to law, approves it.  
This \_\_\_ day of \_\_\_\_\_, 2024 A.D.

Signature of City Clerk

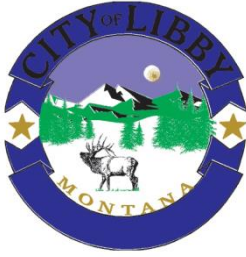
Signature of Mayor

STATE OF MONTANA  
COUNTY OF LINCOLN

Filed on this \_\_\_ day of \_\_\_\_\_, 2024 A.D. at \_\_\_\_\_ O'clock \_\_\_ m.

County Clerk and Recorder \_\_\_\_\_ Deputy

PLAT NO. \_\_\_\_\_



## CITY OF LIBBY

952 E. SPRUCE | POST OFFICE BOX 1428

PHONE 406-293-2731 | FAX 406-293-4090 | WEBSITE: [www.cityoflibby.com](http://www.cityoflibby.com)

January 30, 2024

Davis Surveying, Inc.  
Kenneth Davis  
P.O. Box 896  
Troy, MT 59935

RE: **Tee-Box Estates Minor Subdivision**  
**Tract 1 of C.O.S. 4613, T.30.N., R.31W., Section 15**  
**Lincoln County, Montana**  
**Administrative Minor - Approval with Conditions**

### **GENERAL INFORMATION**

PROPERTY OWNER/APPLICANT: Ralph J. and Judy M. Kauzlarich  
781 Beane Road  
Moxee, WA 98936-9752

APPLICANT'S REPRESENTATIVE: Davis Surveying, Inc.  
Kenneth Davis  
P.O. Box 896  
Troy, MT 59935

LEGAL DESCRIPTION: Tract 1 of C.O.S. 4613 located in the Northwest ¼ of the Northwest 1/4 of Section 15, T.30N., R.31W., Lincoln County, Montana

GENERAL LOCATION: Located within the City of Libby and east of and adjacent to Cabinet Heights Road.

### **PROPOSAL**

The Applicant proposes to develop the Tee-Box Estates Minor Subdivision into three (3) lots from an existing 2.09-acre parcel of land. All lots will be used for single-family residential purposes. All lots are currently vacant. The lots are zoned by the City of Libby as Residential A. The minimum size lot reviewed is 0.64 - acres and the maximum size lot is .72-acres. There are no new roads or common areas proposed for the subdivision. No Parkland dedication is required for first minor subdivisions and no parkland is proposed. Legal and physical access to the proposed subdivision will be off of Cabinet Heights Road along the west boundary. All lots are served by City water and sewer and a will serve letter from the City of Libby is provided with the application. Future development of the lots will require submittal of zoning and building permits applications to the City of Libby to review for compliance with applicable City codes. A Municipal Facilities Exemption (MFE) for the DEQ subdivision review will be required prior to final plat approval. The MFE will need to be filed with the final plat at the time of filing.

## **DISCUSSION**

The Tee-Box Estates Minor Subdivision is located on the east of and adjacent to Cabinet Heights Road. Legal and physical access can be provided from Cabinet Heights Road to each lot and new approaches will be required for each lot at the time of development. All lots are proposed for single-family residential use and the lots are currently vacant. The lots are zoned by the City of Libby as Residential A.

There are no existing easements on the tract and no new easements are proposed. All utilities can be accessed from Cabinet Heights Road.

There are no agricultural water user facilities located within the subdivision boundaries.

The Libby Volunteer Fire Department (LVFD) will provide fire protection for the proposed subdivision. The existing lot is currently served by the LVFD.

There is no flood hazard area within or adjacent to the proposed subdivision.

Law enforcement for the proposed subdivision will be handled by the Libby Police Department. The department currently provides law enforcement for the existing parcel.

The lots are currently undeveloped. The application indicates there will be no impacts to historical or cultural resources.

The lots are proposed to be served by City water and sewer. Water and sewer mains exist along the east side of all lots adjacent to Cabinet Heights Road. These mains are currently used to serve existing development and can be utilized for future development of the lots. A will serve letter from the City of Libby is provided with the application. Any new water and sewer services will be reviewed as part of the zoning and building permit process at the time of development.

Development of each lot will require a grading and drainage plan be submitted to the City of Libby for review and approval with the zoning and building permits at the time of development.

## **SUBDIVISION EVALUATION**

The project is proposed as an administrative minor subdivision and is being reviewed under the requirements of 76-3-609(6), MCA. An administrative minor subdivision review shall be conducted if:

- 1) The project is located in an area that is subject to zoning regulations;
- 2) The project has a will-serve letter from the municipal water and sewer authority;
- 3) The project has existing legal and physical access; and
- 4) The project does not require a variance.

The proposed subdivision meets all the requirements for review as an administrative minor subdivision.

Tee-Box Estates Minor Subdivision  
2-16-2024

### **PRESENT LAND USE**

The land use of the subject property is vacant residential.

### **ADJACENT LAND USE**

North -- vacant  
East -- commercial/golf course  
South -- commercial/golf course  
West -- residential

### **PRIMARY REVIEW CRITERIA**

Subdivisions reviewed as an administrative minor subdivision are exempt from review of the primary review criteria.

### **ENVIRONMENTAL ASSESSMENT CRITERIA**

An Environmental Assessment (EA), summary of probable impacts, and community impact report are not required for an administrative minor subdivision application and therefore were not evaluated.

### **DECISION**

Tee-Box Estates Minor Subdivision is approved with the following conditions:

1. A Municipal Facilities Exclusion (MFE) must be applied for and approved by DEQ prior to approval of the final plat. The approved MFE shall be submitted to the City of Libby with the final plat application and filed with the Clerk and Recorder along with the final plat. The MFE exemption language shall also be provided on the face of the plat.
2. The final plat shall contain a note stating, "Prior to further development of these lots, storm water drainage design shall be completed and submitted to the City of Libby for review and approval as part of the development review."
3. A statement must be included on the final plat that acceptance of a deed for a lot within the subdivision constitutes assent of the owners to a future SID/RSID for water, sewer, and road improvements as identified for the district.
4. The final plat shall be prepared in accordance with the applicable State survey requirements and Montana Subdivision and Platting Act survey requirements.
5. Prior to filing the final plat, the Applicant shall:
  - a. Provide proof that all taxes and special assessments assessed and levied on the property are paid for the current tax year; including any past delinquencies. (*Section 76-3-611(1)(b), MCA*)
  - b. Provide documentation (abstract of title or platting certificate) showing that the Applicant is the lawful owner of the property with the apparent authority to subdivide the same, showing the names of lien holders or claimants of record and the written consent to the subdivision by the owners of the land, if other than the Applicant, and any lien holders of claimants of record against the land. (*Section 76-3-612, MCA*)
6. This preliminary approval shall be in force for not more than three (3) calendar years. (*Section 76-3-610, MCA*)

Tee-Box Estates Minor Subdivision  
2-16-2024

If you have any questions or concerns regarding this letter, please do not hesitate to contact us at (406)443-3962 or [jfadness@wwcengineering.com](mailto:jfadness@wwcengineering.com).

Sincerely,



Jeremy Fadness, AICP  
Libby Contract Planner

cc: City Administrator

**RESOLUTION NUMBER 2040**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIBBY, MONTANA,  
SETTING TAX LEVY FOR THE YEAR 2025 UPON ALL REAL PROPERTY IN THE  
CITY OF LIBBY FOR PURPOSE OF A GOVERNMENT REVIEW AND TO  
ESTABLISHING A STUDY COMMISSION.**

**WHEREAS**, Section 9, Article XI of the Constitution of the State of Montana requires that each unit of local government shall conduct an election once every ten years to determine whether the local government will undertake a local government review procedure; and

**WHEREAS** the voters decided FOR the review of the government of City of Libby and the establishment and funding by a permissive levy not to exceed \$30,000 of a local government study commission consisting of three members to examine the government of City of Libby and submit recommendations on the government; and

**WHEREAS** a local government study commission comprised of three members shall be elected by acclimation within 20 days after the general election on November 5, 2024.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

Establishment and funding for a local government study commission to review the government of the City of Libby shall be funded by a permissive levy not to exceed \$30,000 for fiscal year ending June 30, 2025, six and 7/20 (6.35) mills.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LIBBY,  
MONTANA**, on this 16th day of September 2024.

By: \_\_\_\_\_  
Peggy Williams, Mayor

Attest: \_\_\_\_\_  
Leann Monigold, Clerk/Treasurer