

## 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)

### REGULAR COUNCIL MEETING #1572

MAY 3, 2021 @ 7:00PM

COUNCIL CHAMBERS – CITY HALL

#### CALL TO ORDER:

- Pledge of Allegiance
- Roll Call
- Welcome
- Prayer offered by Tom Cole.
- Approve Special City Council Meeting Minutes for #1570 and #1571 dated 27 April 2021.

#### ANNOUNCEMENTS:

#### COMMITTEE REPORTS:

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

#### PUBLIC COMMENT ON NON-AGENDA ITEMS:

This is an opportunity for the public to offer comments related to issues that are not currently on the agenda that the council has jurisdiction over. **Public comment is limited to 3 minutes.**

**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.**

1. Receive initial proposal for the Logger Trail – Mark Andreessen.
2. Adopt Resolution 1979 – Deer Management Action Plan
3. Adopt Resolution 1981 – Golf Carts (ADA)(Second Reading)
4. Adopt Memorandum of Understanding with Brooks Holdings, LLC.
5. Review and Approve CVGC Grant reimbursement contract and forms.
6. Approve all business licenses received to date.
  - a. ITC Service Group Acquisition, LLC, Telecommunications.
  - b. Managhan’s Furniture, LLC, 403 Mineral Ave., Furniture sales (New Owner).
  - c. Woody’s Landscapes, Individual, 187 Red Rose Ranch Rd., Landscaping.
7. Approve payroll and claims for April 2021.

**UNFINISHED BUSINESS:**

1. IP negotiations.
2. Approve location for vault toilet at the Cross-Country Ski Course. (Tabled)

**GENERAL COMMENTS FROM COUNCIL:**

**ADJOURNMENT:**

Notes:

The manner of Addressing Council:

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

ATTENTION:

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

Posted: 04/29/21

## UNAPPROVED MINUTES

The City held Special Council Meeting #1570 on Tuesday, April 27, 2021, in the Council Chambers at City Hall.

### Call to Order:

The meeting was called to order at 6:00 pm by Mayor Brent Teske.

The Pledge of Allegiance was completed, and Roll Call commenced. Present were Mayor Teske, Councilors; Williams, Beach, Dufficy, Smith, Taylor, and City Clerk/Treasurer Samuel Sikes. Councilor Zimmerman was absent.

### New Business:

Mayor Teske welcomed all in attendance to the Special Meeting for the purpose of discussing the bid summary and awarding the Water System Improvements project. The Mayor read the bids and Engineer Estimates as follows: Engineer Estimate = \$1,366,762.70, Noble Bid = \$1,138,431, S&L Bid = \$1,661,093, TCI Bid = \$1,807,680, White's Bid = \$1,339,392.

Councilor Zimmerman joined the Meeting at 6:04 pm. Mayor Teske announced that Noble Excavating had the low bid and would be awarded the project.

Councilor Zimmerman **MADE A MOTION** to award the Water Systems Improvement project to Noble Excavating, and Councilor Williams **SECONDED**.

Mayor Teske stated that sitting through the awarding process was interesting with Noble being considerably lower than the others with the bid. Councilor Beach asked when work on the project would commence to which Mike Fraser responded that the paperwork would be complete in roughly 10 days adding that as soon as the materials arrived that work would commence. Councilor Smith asked where the bids came from to which Mike Fraser and Mayor Teske responded that S&L was from Idaho and the rest were from Montana. All agreed that it was good that the contract would employ local people.

Councilors Williams, Beach, Dufficy, Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

### General Comments from Council:

None.

**Adjournment:**

Councilor Smith **MADE A MOTION** to adjourn, and Councilor Beach **SECONDED**.

Councilors Williams, Beach, Dufficy, Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

Meeting adjourned at 6:07 pm.

\_\_\_\_\_  
Mayor Brent Teske

Attest; \_\_\_\_\_  
Clerk/Treasurer Samuel Sikes

**UNAPPROVED MINUTES**

The City held Special Council Meeting #1571 on Tuesday, April 27, 2021, in the Council Chambers at City Hall.

**Call to Order:**

The meeting was called to order at 6:15 pm by Mayor Brent Teske.

The Pledge of Allegiance was completed, and Roll Call commenced. Present were Mayor Teske, Councilors; Williams, Beach, Dufficy, Smith, Taylor, Zimmerman, and City Clerk/Treasurer Samuel Sikes.

**New Business:**

Mayor Teske welcomed all in attendance to the Special Meeting for the purpose of designating Michael Fraser as the Environmental Certifying Official and read Resolution 1980.

Councilor Smith **MADE A MOTION** to designate Mike Fraser, and Councilor Beach **SECONDED**.

Mayor Teske asked Mike Fraser to elaborate on the position. Mike Fraser stated that the official will sign all documents and ensure all grant required environmental protective measures are in place. Councilor Smith asked if it was part of the grant process to which Mike Fraser answered that it was.

Councilors Williams, Beach, Dufficy, Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

**General Comments from Council:**

None.

**Adjournment:**

Councilor Williams **MADE A MOTION** to adjourn, and Councilor Beach **SECONDED**.

Councilors Williams, Beach, Dufficy, Smith, Taylor, and Zimmerman voted **FOR**.

**MOTION PASSED.**

Meeting adjourned at 6:19 pm.

\_\_\_\_\_  
Mayor Brent Teske

Attest; \_\_\_\_\_  
Clerk/Treasurer Samuel Sikes

# Logger Trail

---



## Objectives

- Construct new and improve existing side walk infrastructure
- Provide a safe walking surface separate of vehicle traffic and meets ADA requirements.
- Connect the community (schools, business, churches)
- Healthy exercise for all ages.

## Materials

- Paving and curb needs – Approximate Linear Feet: 51,521.1' (9.7 Miles)
  - Approximate Linear Not paved 10,925.8 (2.0Miles)**
  - Approximate Linear Feet Paved 40,595.3 (7.7Miles)**
- Signs – Trail head, waypoints, interpretive

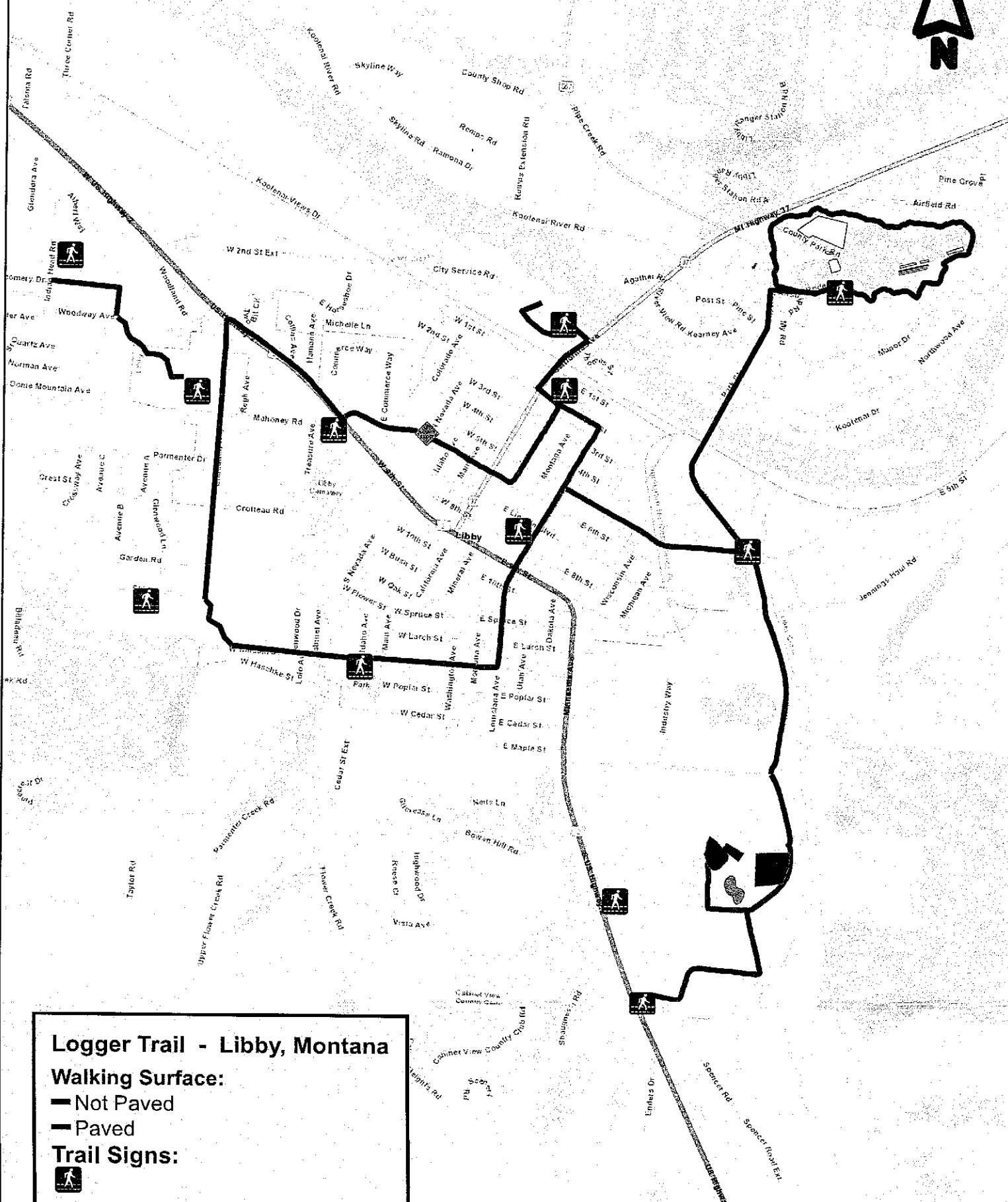
## Programs

- Adopt a sidewalk (maintenance – snow and debris removal)
- Community events- Health network get out and walk

## Funding/Partners

- Grants
- Local Government (City, county, state)
- Donations
- Adjacent Land Owners

# Logger Trail - Libby, Montana



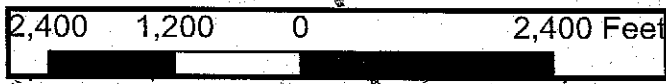
## Logger Trail - Libby, Montana

### Walking Surface:

Not Paved

Paved

### Trail Signs:



# Logger Trail



<b>COMMENT</b>	<b>NAME</b>	<b>FEET</b>
<b>Not Paved</b>		
	Balsam	123.3
	High School	344.4
	Balsam	1386.1
	River Side Park	1536.5
	Balsam	1582
	5 <sup>th</sup> Street	2950
	High School	<u>3003.5</u>
<b>Sum FEET</b>		<b>10,925.8 (Approximately 2.0 Miles)</b>
<b>Paved</b>		
	Balsam	569.8
	Education Way	706.4
	LEMS	855
	Port	1084.8
	Port	1232.3
	California	1365.8
	Port	1400
	Port	1455.3
	Hwy2	2260.3
	Port	3358.7
	Downtown	4059.3
	Port	4751.4
	Louisiana	4765
	Port	4799.2
	J Neils	<u>7,932</u>
<b>Sum FEET</b>		<b>40,595.3 (Approximately 7.7 Miles)</b>
<b>Sum Total FEET</b>		<hr/> <b>51,521.1 (Approximately 9.7 Miles)</b>



# RESOLUTION NO. 1979

## A RESOLUTION OF THE CITY OF LIBBY, A MUNICIPAL CORPORATION OF MONTANA, ADOPTING A DEER MANAGEMENT ACTION PLAN.

WHEREAS, on July 15, 2019, the City of Libby adopted Resolution 1939 authorizing the harvesting and sampling of Deer from public property for Chronic Wasting Disease (CWD); and

WHEREAS, the City of Libby has a large Deer population susceptible to CWD.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Libby that the following Deer Management Action Plan is hereby adopted:

### Deer Management Action Plan

#### City of Libby, Montana

##### I. Overview

The City of Libby (hereinafter “City”) has a large wild deer population that includes both generational year-round Libby residents and transient deer that generally inhabit land immediately adjacent to the City boundaries but move in and out of the City’s residential, business and industrial areas. The City recognizes the importance of, and wishes to preserve, a healthy deer population, the aesthetic value of wildlife viewing as well as the economic value that hunting provides to the area’s businesses. However, the City is an expanding urban environment within a significant wildlife habitat and this creates the potential for conflict between residents and wildlife.

Our tradition and state law recognize the importance of Montana’s public wildlife legacy. Minor or occasional property damage caused by wild deer is a natural and unavoidable consequence of their presence. However, high numbers of resident and non-resident deer pose risks to human safety, public and private property, and natural vegetation, as well as to the deer. Historically, residents of the City have sought government assistance in managing those risks. In addition, Chronic Wasting Disease (CWD) has been detected in Libby deer populations heightening the necessity of orchestrated deer management procedures to maintain healthy populations.

Therefore, the City has adopted this Deer Management Action Plan in concert with the Montana Department of Fish, Wildlife and Parks (FWP) to cooperatively manage the deer population so as to reduce the risks set forth above. It is the intent of the Plan to integrate with the FWP’s Libby CWD Management Plan and to achieve the following specific goals:

1. Elimination of individual deer that are aggressive or threaten safety;
2. Elimination of individual deer that appear sickly;
3. Reduction of damage to property and native vegetation by reducing the number of deer in the City;
4. Prevention of the feeding of deer by educating citizens of the hazards and illegality of doing so, (see MCA 87-3-130 making it a misdemeanor to feed deer);

5. Promoting the safe disposal of deer carcasses by educating citizens on the subject;
6. Promotion of the FWP CWD Management Plan goal to reduce CWD prevalence among the deer population from 13% to below 5%.

## II. The Deer Management Procedures

The Plan will be accomplish its specific goals by implementing the following strategies.

- A. The City will integrate its deer management goals by integrating its Plan with the FWP CWD Management Plan as follows.
  1. The City will assist FWP in conducting surveys to assess Libby deer numbers by using City staff and/or volunteers to conduct transects.
  2. FWP will trap and remove deer in and around the City as follows:
    - a. Trapping will occur from December through February;
    - b. City staff will help to identify deer removal locations and obtain trapping permission from private landowners;
    - c. City Police may assist with trapping; and
    - d. Trapped deer will not be relocated because of high stress to the animal and high mortality rates after release, and because FWP policy does not allow for relocation of deer due to CWD and other disease concerns.
  3. FWP will sharpshoot deer within the urban area in and around Libby as follows:
    - a. Sharp-shooting of deer may be authorized in areas and under conditions in which it is acceptable, safe and effective as determined by the the City Police in conjunction with FWP; and
    - b. City and/or Lincoln County staff will assist as reasonably available and appropriate, recognizing that City police have the training and capacity to safely shoot deer within urban settings.
  4. Deer killed by vehicle or other accident in the city will be removed by the City road department and those killed by vehicle accident on a state highway within the city limits will be removed by the Montana State Highway Department. All such carcasses will be appropriately disposed of at the landfill.
  5. City Staff will work collaboratively with FWP staff to test sick and injured deer by cooperating the FWP Libby area biologist and wardens to ensure CWD testing and proper disposal of carcasses.
  6. City staff will work with FWP and the local food bank or other suitable charities to distribute meat from CWD negative deer removed by FWP.
    - a. FWP will track test results and determine meat that is suitable for distribution;
    - b. City Staff will coordinate with FWP staff to distribute meat in compliance with game transfer laws; and

- c. FWP will provide, maintain and house a freezer used to store carcasses for the duration of this cooperative plan.
7. City staff and FWP will work collaboratively to educate the citizenry:
    - a. City staff and FWP will educate the citizenry to eliminate supplemental feeding and reduce other natural attractants;
    - b. City staff and FWP will educate the citizenry that it is illegal to discharge a firearm to kill deer within the City limits;
    - c. City staff and FWP will educate the citizenry that if they find dead they should notify <who exactly at what number?> and report the location so that it may be removed and disposed of by the appropriate authority.
    - d. City police will notify anyone observed feeding deer that such is illegal under state law, and otherwise educate and encourage them to stop feeding deer;
    - e. City police will provide information to FWP wardens regarding these encounters; and
    - f. FWP will determine if feeding justifies further action, including prosecution .
  8. City staff and FWP will work collaboratively and will jointly monitor the effectiveness of this action plan and keep annual statistics.
    - a. The Lincoln County Sherriff's Office Dispatch accepts all deer complaint calls within the city limits and will notify the appropriate agency to respond, including the City police, Sheriff's office, and FWP; and
    - b. When citizens resist management activities to remove deer on their property, the City staff will refer the occurrence FWP to discuss alternative strategies such as fencing.
  9. This program action plan for deer reduction within the Libby city limits will be effective upon authorization from FWP and the Montana Fish and Wildlife Commission. The program will remain in effect until modified or terminated by the City, Montana FWP, or the Montana Fish and Wildlife Commission.
    - a. The FWP CWD Management Plan goal is to reduce CWD prevalence to below 5%. It will be evaluated after 5 years. In the event that the goals of prevalence is met or the CWD management plan is discontinued, FWP will assist the City in identifying costs and funding sources and in determining whether the City can sustain a its own Plan in the future.
    - b. This Libby Deer Management Action Plan will be reviewed and revised as needed and based on Commission recommendations

**B. Authority For Implementing Deer Management Procedures.**

1. Pursuant to Section 87-1-201 of the Montana Code Annotated, FWP has the authority to "supervise all the wildlife, fish, game and non-game birds, waterfowl and game and fur-bearing animals of the state and may implement voluntary programs specifically."

2. FWP has authority to manage deer populations utilizing hunting and deer culling efforts when CWD prevalence is above 5%. Surveys conducted during 2019-2020 estimated CWD prevalence within City limits to be approximately 13%.
3. The City has authority to manage deer within city limits following with the approval of the Fish and Wildlife Commission pursuant to Section 7-3-1105 MCA, which states "A city or town may adopt a plan to control, remove and restrict game animals as defined in 87-2-101 MCA within the boundaries of the city or town limits for public health and safety purposes. The plan from the city or town will be approved by FWP and the state game commission and any conditions of the same plan will apply."
4. FWP has the authority per 87-1-226 MCA to allow the City to distribute the meat to its own food bank or other appropriate charitable institutions or persons.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF LIBBY, MONTANA, THIS  
3rd DAY OF MAY 2021.

---

Brent Teske, Mayor

ATTEST:

---

Samuel Sikes, City Clerk

# Ordinance 1981

## Chapter 10.37

### GOLF CARTS

#### Sections:

- 10.37.010**      **Definitions.**
- 10.37.020**      **Golf carts generally prohibited.**
- 10.37.030**      **Golf carts permitted.**
- 10.37.040**      **Violation-Penalty.**

#### **10.37.010 - Definitions.**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. "Golf cart" means a motor vehicle that is designed for use on a golf course to carry a person or persons and golf equipment and that has an average speed of less than fifteen (15) miles per hour.

B. "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

C. "Physically disabled person" means any person meeting the criteria set forth in Mont. Code Ann. § 49-4-301 that qualifies for a certificate allowing the person to park in a parking space for the physically disabled. (Ord. No. 1981 05-03-2021)

#### **10.37.020 - Golf carts generally prohibited.**

Per MCA 61-8-391, a person may not operate a golf cart on a public street or highway open to the public unless the operation is pursuant to this chapter and at the times and places set forth herein. (Ord. No. 1981 05-03-2021)

#### **10.37.030 - Golf carts permitted.**

The Libby City Council specifically authorizes limited golf cart operation on public streets and highways within the city limits, only to physically disabled persons, under the following terms and conditions:

##### A. Operating requirements.

1. A person operating a golf cart on a public street or highway must have a valid driver's license or valid low speed restricted driver's license.

2. A golf cart may not be operated on a public street or highway unless it is equipped with:

- a. At least one and not more than two headlamps,
- b. At least one tail lamp,
- c. At least two red reflectors mounted on the rear of the vehicle,
- d. Stop lamps,
- e. A horn, and
- f. A mirror that reflects to the driver a view of the highway for at least 200 feet to the rear of the vehicle.
- g. Turn signals

3. Prior to operation on a public street or highway, the golf cart must be appropriately registered with the Montana Motor Vehicle Division per MCA 61-3-321. The registration decal must be displayed visibly on the golf cart at all times of operation.

4. The owner of a golf cart that is registered and operated on a public street or highway by the owner or with the owner's permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a golf cart in an amount not less than required by MCA 61-6-103.

#### B. Time and place of operation.

1. No golf cart may be driven, operated, or controlled on public streets or highways:

- a. Between sunset and sunrise,
- b. Without the use of lights as required,
- c. Contrary to any traffic law of the city or the State of Montana,
- d. With more than two persons in the vehicle,
- e. On US Highway 2 (9<sup>th</sup> Street), MT Highway 37 (California Avenue), and Mineral Avenue, and
- f. In any area where motor vehicle traffic is prohibited, blockaded or presents hazardous travel, including but not limited to nonmotorized multi-use paths or sidewalks.

2. Golf carts are specifically prohibited from:

- a. operating on public streets or highways for which the posted speed limit exceeds twenty-five (25) miles per hour.

3. Golf carts may only cross US Highway 2 (9<sup>th</sup> Street/Minnesota) at the following intersections with traffic lights:

- a. Louisiana; Idaho; or 6<sup>th</sup> Street

4. Golf carts may only cross Highway 37 (California Avenue) at the following intersections:

a. 3rd Street or Lincoln Blvd. (Ord. No. 1981 05-03-2021)

5. Golf carts may travel Mineral Avenue between Lincoln Blvd and 1<sup>st</sup> Street only.

**10.37.040 - Violation—Penalty.**

Violation of this chapter shall be considered a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500.00). Incarceration shall not be a penalty for violating this chapter. (Ord. No. 1981 05-03-2021)

**FIRST READING** and adopted by the Libby City Council on April 19th, 2021.

**SECOND READING** and adopted by the Libby City Council on May 3rd, 2021.

**SIGNED** by the Mayor on May 3rd, 2021.

ATTEST:

\_\_\_\_\_  
Brent Teske, Mayor

\_\_\_\_\_  
Samuel Sikes, City Clerk/Treasurer

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the City of Libby (hereafter "Libby") with its principal address of 952 East Spruce Street, Libby, Montana 59923 and Brooks Holdings, LLC (hereafter "Brooks") of P.O. Box 998, Libby, Montana 59923;

### RECITALS

WHEREAS, Brooks and Libby are presently parties to a lawsuit designated as Cause No. DV-17-284, MCA filed in the Montana Nineteenth Judicial District Court of Lincoln County, Montana:

WHEREAS, the lawsuit concerns Brooks' purchase of certain real property (Lot 1, Lot 1-A, Plat 7041, and Lot 2, Plat 6717) within what is commonly known as the Millwood Subdivision;

WHEREAS, Brooks and Libby are desirous of fully settling and compromising all issues concerning claims asserted against Libby, and said parties have reached a tentative agreement to settle and compromise those claims, subject to the condition and requirement of the passage of a resolution by the City Council;

WHEREAS, the settlement concerns the status of three sixty-foot roads known as "Millwood Loop Road," "Millwest Road" and "Larch Street" identified on Plats 6717 and 7041, records of Lincoln County, Montana, and whether such roads are city-designated roads;

WHEREAS, Libby abandoned Larch Street as a city road on or about April 6, 2019;

WHEREAS, Libby is willing to abandon Millwood Loop Road and Millwest Road as dedicated City Roads and that any access to the properties along these roads is via private easement as identified on the Easement Exhibit, a copy of which is attached;

WHEREAS, Brooks Holding, LLC, hired Kootenai Surveying, Inc. at its expense to plat and identify the location of the existing private easements that provide physical access to all lots impacted by Larch Street, Millwood Loop Road, and Millwest Road, and Kootenai Surveying, Inc. completed the Easement Exhibit attached hereto;

WHEREAS, the survey revealed that the road as constructed is inconsistent with platted road identified as Millwest Road;

WHEREAS, all property owners benefitting from Millwest Road agree that Millwest



Road shall be abandoned and the private easements shall be recorded to correct the location of the access easement as set forth in the Easement Agreements, attached hereto;

WHEREAS, all parties benefitting from Millwood Loop Road will retain that same access as identified in recorded access easements as noted on the Easement Exhibit.

WHEREAS, a resolution by the Libby City Council is necessary to allow the parties to reflect the proper status of the roads as not being City roads and such roads are abandoned by the City and to approve the settlement and compromise of the parties, the result of which will be to dismiss all claims by Brooks against the City, obtain a release given by Brooks, and allow the private easements to be recorded and the property to be replatted;

NOW, THEREFORE, the parties agree as follows as their Memorandum of Understanding;

1. Upon passage by the required number of the members of the City council, Libby shall cause to be recorded in the official records of the City of Libby a Resolution clarifying Millwood Loop Road and Millwest Road are not city roads and the lots impacted by the Millwood Loop Road and Millwest Road may be benefitted and burdened by, as determined by private owners, in those private access easements identified the attached Easement Exhibit. This action shall be timed so as to occur more or less simultaneously with replatting of the property. The Resolution may include a provision that makes it effective only upon final plat approval,

2. The Brooks shall cause to be recorded, within 72 hours of the approval of the Resolution, Final Plat and Easement Agreements between the owners of Lot 1, Plat 7041, Lot 1-A and Lot 2, Plat 6717 and Lot 2A Certificate of Survey 4235 which adopts and corrects the access easement benefitting the impacted lots. The approved Easement Exhibit is attached hereto. Brooks shall pay all costs, including the preparation of the settlement documents, easement documents, surveying and recording.

3. Brooks shall provide this Memorandum of Understanding and a copy of the Resolution to Montana Department of Revenue and Montana GIS project with a request to remove from the Montana Cadastral references to Larch Street, Millwood Loop Road and Millwest Road. Brooks shall bear all costs in regard to such removal.

4. A Release of claims shall be executed by Brooks and all claims that were asserted or could be asserted against Libby will be dismissed with prejudice.

5. Upon execution of the Release, Brooks shall file an unopposed motion to dismiss any claims that were asserted or could be asserted against Libby with prejudice. The parties agree all such claims asserted against Libby should be dismissed with prejudice.

DATED this \_\_\_\_\_ day of April, 2021

\_\_\_\_\_  
Jeanne M. Brooks  
Brooks Holdings, LLC

\_\_\_\_\_  
James E. Brooks  
Brooks Holdings, LLC

\_\_\_\_\_  
Approved by Amy N. Guth  
Amy N. Guth, Attorney at Law, P.C.  
Counsel for Brooks Holdings, LLC

STATE OF MONTANA                    )  
  ) ss.  
County of Lincoln                    )

On this \_\_\_\_\_ day of April, 2021, before me, a notary public for the State of Montana, personally appeared Jeanne Brooks and James Brooks, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same and that they had authority to sign on behalf of Brooks Holdings, LLC.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Libby  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Brent Teske  
Libby City Mayor

STATE OF MONTANA                    )  
  ) ss.  
County of Lincoln                    )

On this \_\_\_\_\_ day of April, 2021, before me, a notary public for the State of Montana, personally appeared Brent Teske, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same and that they had authority to sign on behalf of City of Libby.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at Libby  
My commission expires: \_\_\_\_\_

APPROVED BY:

\_\_\_\_\_  
Dean Chisholm  
Chisholm & Chisholm, P.C.  
Libby City Attorney

\_\_\_\_\_  
Todd Hammer  
Hammer, Quinn and Shaw, PLLC  
Attorney for the City of Libby

**City of Libby  
Community Development Fund  
Assistance Agreement**

**A. PARTIES:** The parties to this contract (the Contract) are the **City of Libby**, and the **Cabinet View Golf Club**, (the "CVGC"); Tax identification number: \_\_\_\_\_

- **B. PURPOSE:** The purpose of this Contract is for the CVGC to use up to \$541,000.00 in Community Development Fund grant funds, to assist with construction of a new clubhouse facility at project site located at \_\_\_\_\_.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein, the parties hereto agree as follows:

**1. SCOPE AND DUTIES:** The **City of Libby** and the CVGC shall engage in activities as set forth in CVGC's Community Development Fund application, including any written modifications resulting from the review of the application by the **City of Libby** for grant assistance, all of which, by this reference are made a part hereof. The **City of Libby** shall enter into this Assistance Agreement with the CVGC that shall be approved in writing by the City of Libby before the release of funds.

The **City of Libby** will only release funds to reimburse eligible and documented costs. Project Progress Reports shall be submitted with each request for funds.

**2. REPORTING:** Unless otherwise specified by the **City of Libby**, the CVGC will also submit Project Progress Reports quarterly to the **City of Libby** until the CVGC receives Contract closeout approval from the **City of Libby**. The Project Progress Report must be provided on or before each calendar quarter for each year of the Contract time period and at closeout of the Contract. The Project Progress Reports as attached in Exhibit A shall include, but are not limited to, the following information:

- a) Summary of costs for the activities that funds have been requested to date;
- b) Amount of any matching funds expended to date;
- c) Amount of any matching in-kind activity to date;
- d) Total amount requested and total remaining under the Contract; and
- e) Written Progress Report that should include the following items:
  - General synopsis of the work to date toward the grant assistance goals;
  - Any other pertinent information related to the grant and progress of the project.

**3. COMPENSATION AND CONSIDERATION:** The total amount to be reimbursed to the CVGC under the Contract shall be up to **\$541,000.00** for documented and eligible costs.

The **City of Libby** will not reimburse the CVGC for any costs incurred prior to April 19, 2021, nor for any expenses not included in the approved budget or not clearly and accurately supported by the CVGC's records. The CVGC has no matching funds requirements as is consistent with the application.

- a) Reimbursement Requests: The **City of Libby** will authorize the CVGC to draw up to **\$541,000.00** against the funding reserved for the CVGC. In drawing against the reserved amount, the CVGC shall follow the instructions as attached in Exhibit B. Unless otherwise authorized by the **City of Libby**, the CVGC may receive grant funds periodically over the Contract period only upon documenting the expenses to be reimbursed and complete the Reimbursement Report in Exhibit B and copies of all invoices.
- b) Reimbursements Requests will be processed within xxxx business days and reimbursement will be made with xxxx business days.

**4. PERIOD OF CONTRACT:** The Contract will be in effect for the period commencing **April 19, 2021** and ending April 19, 2026. CVGC will begin to draw funds within 3 years of the application date or otherwise provide an update on the anticipated progress of this project.

The Department reserves the right to extend this Contract based on, but not limited to, the Contractor's performance of the contracted activities, and the Contractor's compliance with program requirements. This would include but not limited to:

- a. Detailed narrative from the CVGC that provides the City of Libby a clear picture of the current project activities which clearly outlines why a contract extension is being requested.

**5. LIAISON:** The contact person for the **City of Libby** is (**Contact name, title and phone number**), or successor in the same job role, and (**Contact name, title and phone number**) or successor for the CVGC.

**6. INSURANCE: General Liability.** CVGC shall purchase and maintain occurrence coverage with combined single limits for general liability of \$xxxxxxxx per occurrence and \$xxxxxxxx aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or subcontractors. The State, the **EDO**, and their officers, officials, employees, and volunteers are to be covered and listed as additional insured's; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**8. COMPLIANCE WITH WORKERS' COMPENSATION ACT** The CVGC accepts responsibility for supplying, and requiring all subcontractors to have proof of compliance with the Montana Workers' Compensation Act while performing work for the State of Montana. (Mont. Code Ann. §§ 39-71-401, 39-71-405, and 39-71-417.) The proof of insurance/exemption must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status, and must be kept current for the entire term of the contract.

**CONTRACTS WILL BE TERMINATED PURSUANT TO THE PROVISIONS OF SECTION 11 TERMINATION OF CONTRACT IF THE CVGC FAILS TO PROVIDE THE REQUIRED DOCUMENTATION WITHIN THE ALLOTTED TIME FRAME.**

**11. TERMINATION OF CONTRACT:** This Contract may only be terminated in whole or in part as follows:

(b) Termination for Cause with Notice to Cure Requirement. The **City of Libby** may terminate this Contract for failure of the CVGC, its contractors, or subcontractors to perform or comply with any of the services, duties, terms or conditions contained in this Contract after giving the CVGC written notice of the stated failure. The written notice will demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

(c) Effect of Termination. In the event of termination due to the CVGC's, its contractors', or subcontractors' failure to perform or comply with any of the services, duties, terms, or conditions of this Contract, any costs incurred will be the responsibility of the CVGC. However, at its sole discretion, the **City of Libby** may approve requests by the CVGC for reimbursement of expenses incurred. The **City of Libby's** decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the CVGC to comply with the any of those services, duties, terms, or conditions of this Contract, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the CVGC's control.

**14. DEFAULT:** Failure on the part of either party to perform the provisions of the Contract constitutes default. Default may result in the pursuit of remedies for breach of contract, including but not limited to damages and specific performance.

**15. CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without prior written consent of the Department. Supplies delivered which do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the CVGC's expense.

**16. VENUE:** The Contract is governed by the laws of Montana. The parties agree that any litigation concerning the Contract must be brought in the **01** Judicial District in and for the Lincoln County, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**17. COMPLIANCE WITH LAWS:** The CVGC must, in performance of work under this Contract, fully comply with all applicable federal, state, and tribal laws, rules, policies, and regulations, concerning, but not limited to, human rights, civil rights, employment law, Affordable Care Act and labor law.

The CVGC shall promptly refer to the **City of Libby** any credible evidence that a principal, employee, agent, contractor, subcontractor, or other person has submitted any false claim or has committed any criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving funds provided under this Contract.

**18. DISABILITY ACCOMMODATIONS:** The **City of Libby** does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective

communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**19. ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The CVGC shall not assign, transfer or subcontract any portion of the Contract without the express written consent of the **City of Libby**. This provision would include any changes to the CVGC' business structure, business name and registration with the Montana Secretary of State.

**20. MODIFICATION:** The Contract may not be enlarged, modified, amended or altered except upon written agreement signed by all parties to the Contract.

**21. NOTICE:** All notices required under the provisions of the Contract must be in writing and delivered to the parties' liaisons either by regular mail or personal service.

**22. SEPARABILITY:** A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

**23. HOLD HARMLESS AND INDEMNIFICATION:** The CVGC agrees to protect, defend, and save the State of Montana and the **City of Libby**, their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the CVGC's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the CVGC and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State or **City of Libby**, under the Contract.

**24. REGISTRATION WITH SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Mont. Code Ann. §§ 35-1-1026 and 35-8-1001. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

**25. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** CVGC acknowledges that no State funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State of Montana, Department of Administration, Procurement Bureau at (406) 444-2575 for more information concerning non-visual access standards.

**26. REFERENCE TO CONTRACT:** The Contract number **MUST** appear on all invoices, packing lists, packages and correspondence pertaining to the Contract.

**27. INTEGRATION:** The Contract contains the entire agreement between the parties, and no statements, promises, or inducements of any kind made by either party, or the agents of either party, not contained herein are valid or binding.

**Cabinet View Golf Club**

---

*(CVGC Official: Type Name and Title)*

**City of Libby**

---

*(Typed Name and Title)*

ATTEST:

---

Legal Review



## Exhibit A:

Date:

City of Libby  
952 Est Spruce Street  
Libby, MT 59923

**RE: Community Development Loan Fund - Quarterly Report dated \_\_\_\_\_**

**Activity to Date:**

**Reimbursement Requests to Date:**

Total Grant Dollars Requested

Total Remaining:

**Other:**

Matching Funds:

Inkind Funds:

Sincerely,

**Exhibit B**

**City of Libby: Community Development Fund**

**Cabinet View Golf club**

**Reimbursement Request**

Reimbursement #:

Date:

Invoice #	Invoice Date	Contractor	General Purpose	Grant Request	Total	Invoice attached

Total Requested: \_\_\_\_\_

CVGC Authorizing Signature: \_\_\_\_\_

City Approval: \_\_\_\_\_