



# Livingston City Commission Agenda

March 06, 2018

6:30 PM

City – County Complex, Community Room

1. Call to Order

2. Roll Call

3. Moment of Silence

4. Pledge of Allegiance

5. Consent Items

- A. CONSENT - Approve minutes for regular 2.20.18 commission meeting Page 4
- B. CONSENT - Approve Bills and Claims Page 7

6. Proclamations

7. Scheduled Public Comment

- A. SCHEDULED PUBLIC COMMENT - Planning Board representative Adam Stern to provide an update regarding developing land-use policies for large format retail establishments, revising parkland dedication requirements, obtaining funding for a new Growth Policy, and filling the open seat on the Planning Board Page 15

8. Public Hearings

- A. ORDINANCE NO. 2067 - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 8-5 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "DAILY ACCOUNT OF FUNDS COLLECTED; MONTHLY REPORT, CONTENTS" AND SPECIFICALLY AMENDING THE PROCEDURE, CONTENT AND TIME OF THE CITY COURT MONTHLY REPORT. Page 17

9. Ordinances

10. Resolutions

- A. RESOLUTION NO. 4781 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING CITY MANAGER TO SIGN AGREEMENT WITH THE MONTANA HISTORIC PRESERVATION OFFICE FOR GRANT FOR LOCAL HISTORIC PRESERVATION FOR PERIOD APRIL 1, 2018 TO MARCH 31, 2019. Page 22
- B. RESOLUTION NO. 4782 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, REQUESTING DISTRIBUTION OF BRIDGE AND ROAD SAFETY AND ACCOUNTABILITY PROGRAM FUNDS. Page 36
- C. RESOLUTION NO. 4783 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH

PARK COUNTY TO ESTABLISH A CHAPTER IN THE CITY/COUNTY COMPACT CREATING A PLANNING BOARD SUB-COMMITTEE. Page 40

D. RESOLUTION NO. 4784 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A GENERAL SERVICES AGREEMENT WITH COP CONSTRUCTION LLC Page 44

E. RESOLUTION NO. 4785 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A GENERAL SERVICES AGREEMENT WITH EVERGREEN SKATEPARKS, LLC. Page 64

11. Action Items

A. DISCUSS/APPROVE/DENY - Laura Rhodes, DVM regarding fee waiver for civic center for clinic for rattlesnake vaccination clinic Page 94

B. DISCUSS/APPROVE/DENY - MOU with AFSCME regarding seasonal employees Page 104

C. DISCUSS/APPROVE/DENY - MOU with AFSCME regarding summer schedule Page 106

D. DISCUSS/APPROVE/DENY - Letter of Support regarding proposed BLM project Page 108

12. Public Comment

13. City Manager Comments

14. Commission Comments

15. Adjournment

**Calendar of Events**

March 2, 2018 - 12:00 noon - City Commission and public invited to Public Works for update tour of the Water Reclamation Facility

March 6, 2018 - 5:30 - 6:30 p.m. - City Commission closed meeting to discuss current litigation and strategies

March 6, 2018 - 6:30 p.m. - City Commission regular meeting, Community Room, City/County Complex

March 8, 2018 - International Woman's Day

March 11, 2018 - Daylight savings time starts

March 13, 2018 - 3:30 p.m. - Historic Preservation Committee regular meeting, Community Room, City/County Complex

March 20, 2018 - 6:30 p.m. - City Commission regular meeting, Community Room, City/County Complex

March 21, 2018 - 8:30 a.m. - Urban Renewal Agency regular meeting, East Room, City/County Complex

March 21, 2018 - 12:30 p.m. - Tree Board regular meeting, East Room, City/County Complex

March 21, 2018 - 4:00 p.m. - Livingston Park County Library Board regular meeting, Livingston Park County Library 228 W. Callender

March 21, 2018 - 5:30 p.m. - Planning Board regular meeting, Community Room, City/County Complex

March 28, 2018 - 6:00 p.m. - Parks and Trails regular meeting, Community Room, City/County Complex

## Supplemental Material

### Notice

- **Public Comment:** The public can speak about an item on the agenda during discussion of that item by coming up to the table or podium, signing-in, and then waiting to be recognized by the Chairman. Individuals are reminded that public comments should be limited to items over which the City Commission has supervision, control, jurisdiction, or advisory power (MCA 2-3-202).
- **Meeting Recording:** An audio and/or video recording of the meeting, or any portion thereof, may be purchased by contacting the City Administration. The City does not warrant the audio and/or video recording as to content, quality, or clarity.
- **Special Accommodation:** If you need special accommodations to attend or participate in our meeting, please contact the Fire Department at least 24 hours in advance of the specific meeting you are planning on attending.

**Backup material for agenda item:**

- A. CONSENT - Approve minutes for regular 2.20.18 commission meeting

**LIVINGSTON CITY COMMISSION  
MINUTES**

**February 20, 2018**

**6:30 p.m.**

**City- County Complex, Community Room**

**1. Call to Order**

**2. Roll Call**

- Hoglund, Schwarz, Friedman, Sandberg and Mabie were present.

**3. Moment of Silence**

**4. Pledge of allegiance**

**5. Consent Items (00:00:50)**

**A. CONSENT - Approve minutes from 2.6.18 regular commission meeting**

**B. CONSENT - Approve Bills and Claims**

**C. CONSENT – Ratify Claims**

- Schwarz made a motion to Approve Consent Items A -C. Friedman seconded.
  - All in favor, motion passed 5-0.

**6. Proclamations**

**7. Scheduled Public Comment**

**8. Public Hearings**

**9. Ordinances**

**A. ORDINANCE NO. 2067 - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 8-5 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "DAILY ACCOUNT OF FUNDS COLLECTED; MONTHLY REPORT, CONTENTS" AND SPECIFICALLY AMENDING THE PROCEDURE, CONTENT AND TIME OF THE CITY COURT MONTHLY REPORT. (00:01:40)**

- Friedman made a motion to pass Ordinance No. 2067. Mabie seconded.
  - All in favor, motion passed 5-0.

**10. Resolutions**

**A. RESOLUTION NO. 4780 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, ALLOWING THE LIVINGSTON FIRE CHIEF TO IMPOSE A TEMPORARY BAN ON OUTDOOR BURNING WITHIN THE CORPORATE LIMITS OF THE CITY OF LIVINGSTON, MONTANA. (00:07:30)**

- Schwarz made a motion to pass Resolution No. 4780. Friedman seconded.
  - All in favor, motion passed 5-0.

**11. Action Items**

**A. ACTION - DISCUSS - Downtown project bid process (00:24:00)**

**12. Public Comments**

- Bill Stephens made comments (00:32:33)
- Jeanette Blank made comments (00:48:34)
- Patricia Grabow made comments (00:59:09)

**13. City Manager Comments (01:03:48)**

**14. Public Comments**

- Commissioner Mabie made comments(01:20:20)
- Commissioner Sandberg made comments (01:25:25)
- Commissioner Friedman made comments (01:38:29)
- Commissioner Schwarz made comments (01:39:57)
- Commissioner Hوجلund made comments (01:41:13)

**15. Adjournment (01:44:44) 8:15 p.m.**

**Backup material for agenda item:**

- B. CONSENT - Approve Bills and Claims

02/27/18  
13:38:20

CITY OF LIVINGSTON  
Claim Details  
For the Accounting Period: 2/18

Page: 1 of 8  
Report ID: AP100

For doc #s from 35010 to 35074  
\* ... Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
35010	85771S	3223	BERG'S OVERHEAD DOOR LLC	312.50					
1	2493	02/05/18	Replaced springs	312.50			5310 503 430640	361	101000
35011	85778S	2904	FISHER SAND AND GRAVEL	1,408.22					
1	57456	02/10/18	Buckshot, Concrete sand & sand	1,408.22*			2820 210 430240	450	101000
35012	85786S	3387	J & H, Inc.	73.87					
1	524064	02/08/18	Monthly copier maint.	14.77			1000 106 411030	368	101000
2	524064	02/08/18	Monthly copier maint.	14.77			2500 151 430240	368	101000
3	524064	02/08/18	Monthly copier maint.	14.77			5210 502 430515	368	101000
4	524064	02/08/18	Monthly copier maint.	14.78			5310 503 430625	368	101000
5	524064	02/08/18	Monthly copier maint.	14.78			5410 504 430830	368	101000
35013	85789S	2830	LEHRKIND'S COCA-COLA	17.30					
1	1502942	02/14/18	5 gal big spring	17.30			5310 503 430640	225	101000
35014	85790S	26	LIVINGSTON ACE HARDWARE -	53.97					
1	C37920	02/15/18	Light and battery	53.97*			5210 502 430515	231	101000
35015	85795S	3688	MURDOCH'S RANCH & HOME SUPPLY	6.58					
1	00863	02/09/18	Flint striker	6.58			2500 151 430240	231	101000
35016	85797S	12	NORMONT EQUIPMENT	71.69					
1	16628	02/09/18	Plow bolt	71.69*			2500 151 430240	232	101000
35017	85812S	2999	TEAR IT UP L.L.C.	37.20					
1	B37465	02/15/18	Shredding	6.20			1000 106 411030	200	101000
2	B37465	02/15/18	Shredding	6.20			1000 155 430100	220	101000
3	B37465	02/15/18	Shredding	6.20			2500 151 430220	200	101000
4	B37465	02/15/18	Shredding	6.20			5210 502 430510	220	101000
5	B37465	02/15/18	Shredding	6.20			5310 503 430610	210	101000
6	B37465	02/15/18	Shredding	6.20			5410 504 430810	210	101000
35018	85809S	3353	STORY DISTRIBUTING	942.71					
1	79570	02/13/18	Diesel 371g	891.51*			1000 123 411700	236	101000
2	79570	02/13/18	Additive 64oz	51.20*			1000 123 411700	236	101000
35019	85783S	1920	HORIZON AUTO PARTS	67.40					
1	812825	12/30/17	Wheel and oxygen	67.40			2500 151 430240	231	101000



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For doc #s from 35010 to 35074  
\* ... Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
35020	85790S	26	LIVINGSTON ACE HARDWARE -	49.98					
1	C39193	02/19/18	Heater	24.99*			5210 502 430515	231	101000
2	C39193	02/19/18	Heater	24.99			5310 503 430625	231	101000
35021	85807S	1439	STAFFORD ANIMAL SHELTER	1,603.75					
1	January18	02/09/18	Boarding, Vacc & Euth	1,603.75*			1000 154 440640	350	101000
35024	85798S	151	NORTHWESTERN ENERGY	12,065.98					
1	0709793-4	02/13/18	406 Bennett 50%	956.65			2500 151 430220	341	101000
2	0709793-4	02/13/18	406 Bennett 50%	956.65			5410 504 430820	341	101000
3	2171060-3	02/13/18	Scale House 408 Bennett	90.53			5410 504 430820	341	101000
4	1728687-3	02/07/18	Transfer Station 408 Bennet	573.63			5410 504 430820	341	101000
5	3267010-1	02/07/18	Compactor 330 Bennett	158.99			5410 504 430820	341	101000
6	0709794-2	02/09/18	WRF 316 Bennett	8,166.44			5310 503 430640	341	101000
7	0720048-8	02/07/18	330 Bennett 1/4	252.63			5210 502 430520	341	101000
8	0720048-8	02/07/18	330 Bennett 1/4	252.63			5310 503 430620	341	101000
9	0720048-8	02/07/18	330 Bennett 1/4	252.63			5410 504 430820	341	101000
10	0720048-8	02/07/18	330 Bennett 1/4	252.63			1000 106 411030	341	101000
11	3015965-1	02/13/18	Fire Training Center	152.57*			1000 141 420400	341	101000
35025	85798S	151	NORTHWESTERN ENERGY	1,697.12					
1	0709871-8	02/13/18	Star Addition	299.68			2400 420100	340	101000
2	3287727-6	02/13/18	320 Alpenglow	41.24			2400 420100	340	101000
3	3386783-9	02/13/18	Btwn G and H on Clark	61.35			2400 420100	340	101000
4	3386845-6	02/13/18	Btwn I and K on Callender	59.31			2400 420100	340	101000
5	3386846-4	02/13/18	Btwn 7th and 8th on Summit	29.22			2400 420100	340	101000
6	1498936-2	02/13/18	I90 & 89S	5.85			2400 420100	340	101000
7	0709796-7	02/13/18	97 View Vista Dr.	5.85			2400 420100	340	101000
8	1893530-4	02/13/18	600 W Park	92.74			2400 420100	340	101000
9	1493850-0	02/13/18	412 W Callender	80.15			2400 420100	340	101000
10	3141997-1	02/13/18	C and D on Lewis	22.82			2400 420100	340	101000
11	2023484-5	02/14/18	1100 W Geyser	5.85			2400 420100	340	101000
12	2023479-5	02/14/18	900 W Geyser	5.85			2400 420100	340	101000
13	2114861-4	02/13/18	132 South B	192.25			2400 420100	340	101000
14	1893536-1	02/13/18	E street and alley	62.61			2400 420100	340	101000
15	1893541-1	02/13/18	18 W Park	132.69			2400 420100	340	101000
16	1747572-4`	02/13/18	F and G on Callender	33.43			2400 420100	340	101000
17	1747570-8	02/13/18	D and E on Callender	67.01			2400 420100	340	101000
18	1613803-4	02/13/18	M and N on Callender	86.87			2400 420100	340	101000
19	1290352-2`	02/13/18	School Flasher Park and 13	8.36			2400 420100	340	101000
20	1134879-4	02/13/18	North 7th and Montana and C	53.98			2400 420100	340	101000
21	1134866-1	02/13/18	N. 2nd and Montana and Chin	83.41			2400 420100	340	101000
22	0709869-2	02/13/18	Carol lane	119.47			2400 420100	340	101000
23	3093027-5	02/13/18	105 W Park	64.31			2400 420100	340	101000

02/27/18  
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CITY OF LIVINGSTON  
Claim Details  
For the Accounting Period: 2/18

Page: 3 of 3  
Report ID: AP100

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Claim Line #	Check	Invoice #/Inv Date	Vendor #/Name/Description	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
24	3093023-4	02/13/18	320 North Main	19.98			2400 420100	340	101000
25	3093003-6	02/13/18	114 W Summit	35.91			2400 420100	340	101000
26	3184602-5	02/13/18	202 South 2nd	26.93			2400 420100	340	101000
35027	85798S		151 NORTHWESTERN ENERGY	443.29					
1	0709891-6	02/13/18	15 Fleshman Creek	17.74			1000 155 430950	341	101000
2	0709870-0	02/13/18	422 South G	208.65			1000 155 430950	341	101000
3	0709878-3	02/12/18	227 River Dr. Conc.St. &St	158.06			1000 155 430950	341	101000
4	0709884-1	02/12/18	616 River Dr. Pmp	0.10			1000 155 430950	341	101000
5	0709879-1	02/08/18	227 River Dr. Softball fiel	7.35			1000 155 430950	341	101000
6	1906055-7	02/14/18	815 North 13th Soccer field	1.56			1000 155 430950	341	101000
7	0720176-7	02/13/18	Weimer Park	20.17			1000 155 430950	341	101000
8	1155965-5	02/13/18	229 River Dr.	6.09			1000 155 430950	341	101000
9	2138754-3	02/13/18	G street Park	17.60			1000 155 430950	341	101000
10	3210240-2	02/13/18	616 River Dr.	5.97			1000 155 430950	341	101000
35028	85798S		151 NORTHWESTERN ENERGY	4,780.49					
1	0709873-4	02/13/18	800 W. Cambridge	26.66			5310 503 430625	344	101000
2	0719058-0	02/07/18	3 Rogers Lane L.S.	87.69			5310 503 430625	344	101000
3	0709914-6	02/07/18	1011 River Dr.	21.44			5310 503 430625	344	101000
4	1452951-5	02/07/18	Monroe L.S.	498.02			5310 503 430625	344	101000
5	1594141-2	02/07/18	9th and 10th Lift Station	24.68			5310 503 430625	344	101000
6	3258086-2	02/13/18	2800 E. Park L.S.	365.67			5310 503 430625	344	101000
7	3258262-9	02/07/18	320 Alpenglow L.S.	246.27			5310 503 430625	344	101000
8	0709892-4	02/13/18	40 Water Tower Ave.	45.18			5210 502 430515	341	101000
9	0709892-4	02/08/18	132 South B	1,267.51			5210 502 430515	341	101000
10	0709886-6	02/13/18	200 Reservoir	99.17			5210 502 430515	341	101000
11	0709894-0	02/07/18	56 Water Tower	409.15			5210 502 430515	341	101000
12	1441030-2	02/08/18	D and Geyser Well House	1,377.63			5210 502 430515	341	101000
13	0709874-2	02/07/18	Werner Addition Pump	180.59			5210 502 430515	341	101000
14	0709875-9	02/07/18	900 River Dr. Pmp	130.83			5210 502 430515	341	101000
35030	4369S	999999	ENGLAND, HAROLD	500.00					
Bond Name: Hardesty John Charles Donavon									
Date Paid: 12/15/2015									
Receipt #: 68924									
1	TK2015-042	02/15/18	Bond Release - John Hardes	500.00			1000 203010		102030
35031	85791S		3370 LIVINGSTON BUSINESS IMPROVEMENT	28,656.39					
1	17-18	01/31/17	Q1 & Q2 Distribution	28,656.39			2650 470100	350	101000

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Page: 4 of 11  
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35032	85798S	151 NORTHWESTERN ENERGY		2,423.62					
1	709868	02/13/18 37% Faciility		8.50			1000 121 411230	341	101000
2	709935	02/08/18 37% Faciility		2,415.12			1000 121 411230	341	101000
35033	85803S	3023 RICK'S REFRIGERATION, INC.		31.45					
1	12638	01/29/18 37% HVAC		31.45			1000 121 411230	365	101000
35034	85774S	1747 CANON FINANCIAL SERVICES, INC		76.10					
1	18331886	02/22/18 Canon lease		76.10			1000 109 460442	368	101000
35035	85793S	1150 MONTANA BOILER OPERATOR PROGRAM		105.00					
1	2018	02/12/18 Boiler Renewal- Durette		35.00			5310 503 430640	380	101000
2	2018	02/13/18 Boiler Renewal-Frellich		35.00			5310 503 430640	380	101000
3	2018	02/12/18 Boiler Renewal-Emter		35.00			5310 503 430640	380	101000
35036	85814S	2595 TOWN & COUNTRY FOODS -		8.55					
1	TK2018-005	01/30/18 Restitution - Matthew More		8.55			1000 351030		101000
35037	85785S	102 INDUSTRIAL TOWEL		32.80					
2	45772	02/16/18 Rug maint.		32.80			1000 121 411230	360	101000
35038	85781S	541 HAEFS, BRAD		75.00					
1	17-18	02/21/18 Building Code Conference		75.00			1000 143 420403	380	101000
35039	85799S	2437 O'REILLY AUTOMOTIVE, INC		63.30					
1	1558-12059	02/16/18 Capsule		63.30*			1000 131 420100	231	101000
35040	85815S	3237 WHISTLER TOWING, LLC		300.00					
1	7951	02/16/18 Abandoned Ford Ranger		75.00			1000 131 420100	350	101000
2	7952	02/16/18 Abandoned Honda Civic		75.00			1000 131 420100	350	101000
3	8006	02/21/18 Abandoned Ford Thunderbird		75.00			1000 131 420100	350	101000
4	7807	02/21/18 Abandoned Chevy 3500		75.00			1000 131 420100	350	101000
35041	85782S	3750 HAPPE, HOLLY		52.09					
1	334447	02/05/18 Office Supplies		39.49*			1000 102 410360	200	101000
2	334792	02/14/18 Office Supplies		12.60*			1000 102 410360	200	101000
35042	85780S	54 GATEWAY OFFICE SUPPLY		46.25					
1	39688	02/13/18 Office Supplies		46.25			1000 123 411700	211	101000

02/27/18  
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Page: 5 of 5  
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For doc #s from 35010 to 35074  
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Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
35043	85772S	3069 BILLINGS CLINIC TRAINING CENTER		6.00					
1	14257	02/01/18 CPR Class		6.00			5510 142 420402	380	101000
35044	85790S	26 LIVINGSTON ACE HARDWARE -		23.96					
1	C36825	02/12/18 Smoke Detectors		23.96			1000 141 420400	220	101000
35045	85814S	2595 TOWN & COUNTRY FOODS -		77.94					
1	8236002	02/14/18 Station Supplies		36.77			1000 141 420400	220	101000
2	8236002	02/14/18 Station Supplies		29.05*			5510 142 420730	220	101000
3	8236002	02/15/18 Cleaning Supplies		12.12*			5510 142 420730	220	101000
35046	85804S	2299 RIVER BEND THREADS		75.00					
1	635	12/08/17 Reserve Uniforms		75.00			1000 141 420402	148	101000
35047	85773S	2662 BOUND TREE MEDICAL, LLC		222.26					
1	82774998	02/13/18 Patient Supplies		222.26			5510 142 420730	235	101000
35048	85775S	23 CARQUEST AUTO PARTS		105.46					
1	1912402888	02/20/18 Batteries and xtreme blue		105.46			1000 155 430930	362	101000
35049	85784S	63 HOUSE OF CLEAN		279.41					
1	203994	02/21/18 Floor stripper and finish		279.41*			1000 155 460442	231	101000
35050	85785S	102 INDUSTRIAL TOWEL		68.34					
1	46434	02/23/18 Slate WRF		24.50			5310 503 430610	224	101000
2	46434	02/23/18 Mat cleaning		8.77			5310 503 430610	224	101000
3	46434	02/23/18 Mat cleaning		8.77			5210 502 430510	224	101000
4	46434	02/23/18 Mat cleaning		8.77			5410 504 430820	224	101000
5	46434	02/23/18 Mat cleaning		8.77			2500 151 430220	224	101000
6	46434	02/23/18 Mat cleaning		8.76			1000 106 411030	200	101000
35051	85787S	2863 KIMBALL MIDWEST		357.62					
1	6158498	02/16/18 parts		357.62			2500 151 430240	231	101000
35052	85790S	26 LIVINGSTON ACE HARDWARE -		14.99					
1	C38286	02/16/18 Sledge		14.99			1000 155 430930	362	101000
35053	85796S	64 NEWMAN TRAFFIC SIGNS		557.36					
1	0318368	02/14/18 Signs		557.36*			2820 210 430240	241	101000

02/27/18  
13:38:20

CITY OF LIVINGSTON  
Claim Details  
For the Accounting Period: 2/18

Page: 6 of 6  
Report ID: AP100

For doc #s from 35010 to 35074  
\* ... Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
35054	85805S	1718 SOLID WASTE SYSTEMS, INC.		322.58					
1	0103256	02/21/18 Filter		322.58*			5410 504 430830	231	101000
35055	85806S	3599 SPRING CORPORATION		1,500.00					
1	8 07/24/17	LYSA		1,500.00*			2211 411810	940	101000
35056	85809S	3353 STORY DISTRIBUTING		529.69					
1	79661	02/20/18 Diesel 217g		504.09*			1000 123 411700	236	101000
2	79661	02/20/18 Additive 32oz		25.60*			1000 123 411700	236	101000
35057	85813S	2991 TITAN MACHINERY		2,196.60					
1	10463876	02/05/18 Sweeper		2,196.60*			2500 151 430240	232	101000
35058	85801S	3741 PRODUCTIVITY PLUS ACCOUNT		45.45					
1	20180128	01/28/18 Finance charge		45.45*			2500 151 430240	630	101000
35060	85777S	3757 DIRECT PACKET, INC.		6,665.43					
1	16967	02/12/18 Video System for City Court		6,665.43*			1000 102 410360	940	101000
35061	85802S	3755 REEL ACTION MEDIA, LLC		2,225.00					
1	HH 103	02/13/18 Mill Levy Info Video Final		2,225.00*			1000 101 410130	368	101000
35062	85808S	2608 STATE OF MONTANA - ITSD		149.86					
1	20180131	01/31/18 33% Video Conferencing		149.86			1000 102 410360	380	101000
35063	85811S	3586 TARR, MARGARET		455.46					
1	17-18	01/26/18 Costco Concessions Reimb.		108.74			1000 109 460449	226	101000
2	17-18	01/28/18 Amazon Scotch Tape		12.98			1000 109 460449	220	101000
3	17-18	01/28/18 Amazon Paper Towels		26.12			1000 109 460449	220	101000
4	17-18	02/08/19 Costco Concessions Reimb.		95.70			1000 109 460449	226	101000
5	17-18	02/22/18 Costco Concessions Reimb.		211.92			1000 109 460449	226	101000
35064	85776S	3364 CITY OF LIVINGSTON		31.00					
1	17-18	01/22/18 Albertsons - Water Refill		4.00			1000 109 460449	220	101000
2	17-18	02/19/18 Albertsons - Water Refill		2.00			1000 109 460449	220	101000
3	17-18	02/20/18 Cash Register		25.00			1000 109 460449	220	101000
35065	85810S	3713 SYSCO MONTANA, INC		268.88					
1	143616301	01/31/18 Coffee		268.88			1000 123 411700	211	101000

02/27/18  
13:38:20

CITY OF LIVINGSTON  
Claim Details  
For the Accounting Period: 2/18

Page: 7 of 14  
Report ID: AP100

For doc #s from 35010 to 35074  
\* ... Over spent expenditure

Claim Line #	Check	Invoice #/Inv Date/Description	Vendor #/Name/	Document \$/ Line \$	Disc \$	PO #	Fund Org Acct	Object Proj	Cash Account
35066	85788S	3449 LEAF		27.60					
1	8143451	02/19/18 Kyocera Copier		27.60			2300 132 420160	220	101000
35067	85800S	3728 PORTEEN, JAY		156.31					
1	17-18	02/23/18 Travel - CLE Helenea		156.31			1000 107 411100	370	101000
35068	85794S	999999 MUELLER, BRIAN		100.00					
1	TK2016-026	02/22/18 Restitution - Ryan Fields		100.00			1000 351030		101000
35069	85779S	999999 FLEEGER, JASON		90.00					
1	TK20170357	02/22/18 Restitution - C. Morricks		40.00			1000 351030		101000
2	TK20170357	02/22/18 Restitution - C. Morricks		50.00			1000 351030		101000
35070	85792S	999999 MISKA, DIANE		40.00					
1	CR2016-001	02/22/18 Restitution - D. Munro		20.00			1000 351030		101000
2	CR2016-002	02/22/18 Restitution - J. Munro		20.00			1000 351030		101000
35071	85815S	3237 WHISTLER TOWING, LLC		75.00					
1	8139	02/22/18 Tow 77 Dodge Truck		75.00			1000 131 420100	350	101000
35072	85775S	23 CARQUEST AUTO PARTS		18.04					
1	1912-40110	01/26/18 Vehicle Supplies		18.04			1000 141 420400	232	101000
35073	85769S	3727 AAA CLEANING, LLC		300.00					
1	02-2018	02/28/18 Cleaning - February		300.00			1000 121 411230	360	101000
35074	85770S	3605 ADVANCED ENGINEERING &		79,422.47					
1	55611	11/14/17 October WRF Construction Serv		79,422.47*			5310 503 430640	940	101000
			# of Claims	60	Total:	152,410.31			

**Backup material for agenda item:**

- A. SCHEDULED PUBLIC COMMENT - Planning Board representative Adam Stern to provide an update regarding developing land-use policies for large format retail establishments, revising parkland dedication requirements, obtaining funding for a new Growth Policy, and filling the open seat on the Planning Board

## **Report to City Commission**

Livingston Planning Board & Zoning Commission  
*February 15, 2018*

Re: Developing land-use policies for large format retail establishments

Dear Chairperson, Livingston City Commission:

By this letter, the City Planning Board informs you of our intent to solicit public input for developing land-use policies for large format retail establishments.

We have identified a few recent events that suggest Livingston has a need to evaluate and perhaps develop land-use policies for large retail establishments, and we have begun investigating potential land-use issues and the tools necessary to protect Livingston.

To move forward with this effort, we need public input to ensure that any recommendations reflect our community's values and objectives. We plan to schedule two public meetings, and invite citizens to express their opinions and ideas.

Please contact me if you have any questions or comments, and thank you for your time.

Sincerely,

Adam Stern  
Chair, Planning Board



**Backup material for agenda item:**

- A. ORDINANCE NO. 2067 - AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 8-5 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED "DAILY ACCOUNT OF FUNDS COLLECTED; MONTHLY REPORT, CONTENTS" AND SPECIFICALLY AMENDING THE PROCEDURE, CONTENT AND TIME OF THE CITY COURT MONTHLY REPORT.

**ORDINANCE NO. 2067**

**AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 8-5 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED “DAILY ACCOUNT OF FUNDS COLLECTED; MONTHLY REPORT, CONTENTS” AND SPECIFICALLY AMENDING THE PROCEDURE, CONTENT AND TIME OF THE CITY COURT MONTHLY REPORT.**

\* \* \* \* \*

**Purpose.**

The purpose of this Ordinance is to provide a procedure that will reflect a more accurate monthly City Court report to the Livingston City Commission.

\* \* \* \* \*

**WHEREAS**, currently Ordinance Section 8-5 requires the City Judge to present a report to the Livingston City Commission at the first Commission meeting of every month, giving a statement of cases disposed by the City Court, and fines and costs collected during the preceding calendar month, accompanied by receipts from the City for the amounts of such fines and costs; and

**WHEREAS**, the Livingston City Commission believes requiring the City Judge to submit a written report to the Livingston City Commission at the second Commission meeting of every month which would include a statement of cases disposed, fines and costs collected during the preceding calendar month, and a reconciliation from the City Finance Office would provide a procedure that will reflect a more accurate monthly City Court report to the Livingston City Commission.

**NOW, THEREFORE, BE IT ORDAINED** by the City Commission of the City of

Livingston, Montana, as follows:

That Section 8-5 of Chapter 8 of the Livingston Municipal Code is hereby amended, with strike through deletions and additions underlined and in bold, as follows:

• **Section. 8-5. – Daily account of funds collected; monthly report, contents.**

It shall be the duty of the City Judge to turn over each day to the City all fines received.

At the ~~first~~ **second** meeting in each month, the City Judge shall ~~present~~ **submit** to the City Commission a report, in writing, giving a statement of cases ~~tried for offenses~~ against the City, **disposed** and fines and costs collected, during the preceding calendar month, which report shall be accompanied by ~~receipts from the City for the amount of such fines and costs.~~ **a reconciliation from the City Finance Office.**

**Effective date:**

This ordinance will become effective 30 days after the second and final adoption.

**PASSED** by the City Commission of the City of Livingston, Montana, on first reading at a regular session thereof held on the 20<sup>TH</sup> day of February, 2018.

\_\_\_\_\_  
**DOREL HOGLUND- Chairman**

**ATTEST:**

\_\_\_\_\_  
**LISA HARRELD**  
**Recording Secretary**

\* \* \* \* \*

**PASSED, ADOPTED AND APPROVED** by the City Commission of the City of

Livingston, Montana, on second reading at a regular session thereof held on the \_\_\_\_\_ day  
of \_\_\_\_\_,

2018.

\_\_\_\_\_  
**DOREL HOGLUND - Chairman**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LISA HARRELD**  
**Recording Secretary**

\_\_\_\_\_  
**JAY PORTEEN**  
**City Attorney**

**NOTICE**

The public is invited to attend and comment at a public hearing to be held on March 6, 2018, at 6:30 p.m. in the Community Room of the City County Complex, 414 East Callender Street, Livingston, Montana, on the first reading of **ORDINANCE NO. 2067** entitled **AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AMENDING SECTION 8-5 OF THE LIVINGSTON MUNICIPAL CODE ENTITLED “DAILY ACCOUNT OF FUNDS COLLECTED; MONTHLY REPORT, CONTENTS” AND SPECIFICALLY AMENDING THE PROCEDURE, CONTENT AND TIME OF THE CITY COURT MONTHLY REPORT.**

A copy of the ordinance is available for inspection at the City Office, 414 East Callender Street, Livingston, MT 59047. For further information call the City Attorney at (406)823-6007.

(Notice must be published twice at least 6 days apart. (7-1-4127(6) and posted on the City Bulletin Board, and copies available for the public (7-5-103 MCA).

**Backup material for agenda item:**

- A. RESOLUTION NO. 4781 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING CITY MANAGER TO SIGN AGREEMENT WITH THE MONTANA HISTORIC PRESERVATION OFFICE FOR GRANT FOR LOCAL HISTORIC PRESERVATION FOR PERIOD APRIL 1, 2018 TO MARCH 31, 2019.



Livingston City Commission  
**LEGISLATIVE ACTION SUMMARY**  
Ordinance/Resolution No: 4781

**Requested by:** Jim Woodhull, Building/Planning/Code Enforcement Director

**Date of First Consideration/Status:** March 6, 2018

**Purpose of Legislation:** To continue receiving grant funding from the State of Montana through the Certified Local Government Program for Historic Preservation

**Statutory Authority/Reference:** N/A

**Background:** The City has participated in the CLG program since the 1980's.

**Staff Recommendation:** Staff recommends approval to continue to receive the grant.

**Fiscal Impact:** \$5,500 grant to support the City's Historic Preservation (department & line-item #1000.106.411030.349)

**Regulatory Impact (local):**

**Attachments:** State of Montana Agreement MT-18-022

**RESOLUTION NO. 4781**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING CITY MANAGER TO SIGN AGREEMENT WITH THE MONTANA HISTORIC PRESERVATION OFFICE FOR GRANT FOR LOCAL HISTORIC PRESERVATION FOR PERIOD APRIL 1, 2018, TO MARCH 31, 2019.**

**WHEREAS**, the Montana State Historic Preservation Office (SHPO) has received a grant for purposes of historic preservation from the National Park Service; and

**WHEREAS**, the City of Livingston has previously entered into agreements with SHPO to receive a grant not to exceed \$5,500.00 for purposes of historic preservation in the City of Livingston (See prior Resolution Nos. 4292, 4359, 4444, 4539); and

**WHEREAS**, the Agreement attached hereto as Exhibit A which is incorporated by this reference as though fully set forth herein establishes the terms and conditions for receiving said grant.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Commission of the City of Livingston, Montana, as follows:

That the City Manager is hereby authorized to enter into the Agreement with the State of Montana Historic Preservation Office attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston, this \_\_\_\_\_ day of March, 2018.

\_\_\_\_\_  
DOREL HOGLUND – Chairman

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
LISA HARRELD  
Recording Secretary

\_\_\_\_\_  
JAY PORTEEN  
City Attorney

Resolution No. 4781  
Agreement with State Historic Preservation Office



**STATE OF MONTANA AGREEMENT**  
**MT-18-022**

This grant agreement (Agreement) is hereby made between City of Livingston, 414 East Callender Street, Livingston, MT 59047-2700, DUNS# 137254368 (the "Subgrantee") and the Montana State Historic Preservation Office, Montana Historical Society ("MHS"), 225 North Roberts, PO Box 201202, Helena, Montana 59620-1202 (the "Grantor"). Liaison for the Subgrantee is Jim Woodhull, the Historic Preservation Officer. Liaison for the grantor is Kate Hampton, Community Preservation Coordinator.

The State has been awarded \$801,667 of grant monies from the U.S. Department of the Interior, the National Park Service under the Historic Preservation Fund for the Federal fiscal year of 2018 (October 1, 2017 – September 30, 2018). The funding for this agreement is provided by this award, CFDA number 15.904, Historic Preservation Fund Grants-In-Aid. The Federal Award Identification Number assigned by the National Park Service is P18AF00012, and the HPF system number is to be determined.

Section 17-1-106, Montana Code Annotated, requires any state agency which receives non-general funds to identify and recover its indirect costs (IDC). MHS's indirect cost rate is determined annually and is applied as a percentage of direct costs charged to a federal award. As defined by 2 CFR Part 200 (formerly OMB Circular A-87), MHS's current IDC rate is 14.91% for state fiscal year 2018 (July 1, 2017 to June 30, 2018). IDC will not be charged in relation to this agreement.

The two parties, in consideration of mutual covenants and stipulations described below, agree as follows:

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

This Agreement shall take effect on April 1, 2018 and shall terminate on March 31, 2019 unless a new termination date is set or the agreement is terminated as provided in this contract. Total payments by the "Grantor" for all purposes under this contract shall not exceed \$5,500.00. In the event that the grantor does not receive full funding from the National Park Service, the total grant award may be reduced, as outlined in the CLG Manual. Payment shall be made on a reimbursement basis by request of Subgrantee to the grantor. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

**2. SERVICES AND/OR SUPPLIES**

The Subgrantee shall:

1. Maintain an active Historic Preservation Commission (HPC) that will advocate for preservation, assist the HPO to accomplish preservation goals, and fill vacancies on the HPC promptly.
2. Participate in and carry out the responsibilities for Certified Local Government program status as outlined in "The Montana Certified Local Government Manual."
3. Ensure historic preservation concerns are considered at all levels of local government planning and are incorporated as goals of other local, state, and federal projects.
4. Administer local preservation ordinances.
5. Designate a minimum half-time designated Historic Preservation Officer (HPO) who demonstrably plays an active and consistent role in the conduct of the Subgrantee's historic preservation activities. On behalf of the Subgrantee it is the role of HPO to conduct these activities and/or work with the HPC to:
  - a. Regularly report on HPC activities at local government Commission meetings and be available for comment to these groups and other local government offices;
  - b. Provide technical assistance, direction, and/or literature on historic preservation tax credits, National Register, Federal regulations and Secretary of Interior Standards;
  - c. Evaluate historic properties for potential and feasible reuse and rehabilitation;
  - d. Coordinate, promote and participate in events such as National Historic Preservation Month and/or other preservation related activities;
  - e. Cooperate and communicate with the Grantor and fellow HPO/HPCs in Montana and elsewhere

as appropriate; and

f. Submit semi-annual progress reports, meeting minutes and financial reports per deadlines outlined in this agreement. In the Final Progress Report, the HPO will identify the benefits the local government has derived as a result of the employment of a HPO, the needs of the local government for future professional preservation efforts, and any additional functions of the HPO carried out which further the understanding and implementation of historic preservation values and objectives in the local government.

6. Send at least one (1) person from the Certified Local Government to a State Historic Preservation Office (SHPO) - approved training. The attendee shall attend the entire training and report back to their Preservation Commission.

All work completed under this funding agreement must meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation as interpreted by the Grantor. Final products or services that do not fulfill the requirements of this Agreement, and do not comply with the appropriate Secretary of the Interior's Standards, will not be reimbursed, and any advance payments made in connection with such products or services must be repaid to the Grantor.

### 3. CONSIDERATION/PAYMENT

**3.1 Payment Schedule.** In consideration of Services rendered in this Agreement, the Grantor agrees to pay the Subgrantee as follows:

1. The Subgrantee agrees to submit semi-annual Progress Reports, meeting minutes, and Requests for Reimbursement. Reports will be accompanied by the following documentation:
  - a. The Subgrantee's name, address and agreement number MT-18-022;
  - b. A report discussing the work completed during the reporting period. Include meeting agendas and minutes;
  - c. An itemized listing of cash or in-kind donations that comprise the nonfederal match;
  - d. An itemized listing of project expenses that are charged to the federal grant; If indirect costs (IDC) are claimed for reimbursement (or match), the IDC rate must be in accordance with 2 CFR Part 200.414. A copy of the IDC approval letter from the Cognizant agency must be submitted to the Grantor and approved prior to any reimbursement.
  - e. Receipts, invoices, and/or financial reports sufficient to document each expenditure.
  - f. The net request for payment (reimbursement); and
  - g. Products produced during the reporting period.
2. All Requests for Reimbursement must be approved by the Grantor prior to payment. Payment for work completed under this Agreement may be withheld pending the delivery and acceptance of such items. All Subgrantees must retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of 3 years or until an acceptable audit (accessible by auditors) has been performed and all claims and audit findings involving the records have been resolved. The 3-year retention period starts from the date of the submission of the final report. A final Request for Reimbursement must be submitted within thirty (30) days of the termination of this Agreement if they are to qualify for payment.
3. All Requests for Reimbursement will be reviewed for eligibility and allow-ability under Chapters 12, 13 and 14 of the National Park Service's Historic Preservation Fund Manual and the State CLG Manual. The Subgrantor may request a copy of the CLG Manual from the grantor and the Historic Preservation Fund Manual is available for inspection at the SHPO.
4. The Subgrantee shall, at minimum, provide documentation detailing forty percent (40%) matching non-federal funds for the overall grant award. In order to receive the full grant award of \$5,500.00, the minimum dollar amount of match necessary to be provided by the Subgrantee is \$3,666.67 in matching in-kind services or cash. In the event that the grant award is reduced, the match requirement would be reduced proportionally. Requests for Reimbursement require the same 40% documentation relative to the amount requested. The

accepted Grant Application, reviewed and approved by the Grantor, provides an estimation of sources and amounts of matching funds from the Subgrantee.

5. The Grantor may retain final payment of federal grant funds until such time as the approved project work has been successfully completed and all conditions of this Agreement have been met.

**3.2 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Subgrantee shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.

**3.3 Reference to Contract.** The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to pay the invoice.

#### 4. ACCESS AND RETENTION OF RECORDS

**4.1 Access to Records.** Subgrantee shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 20, Severability, without incurring liability, for Subgrantee's refusal to allow access as required by this Section. (18-1-118, MCA.)

**4.2 Retention Period.** Subgrantee shall create and retain all records supporting the services rendered for a period of eight years after either the completion date of this Contract or termination of the Contract.

#### 5. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Subgrantee may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA) Subgrantee is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Subgrantee. No contractual relationships exist between any subcontractor and State under this Contract.

**5.1** The Subgrantee agrees that the procurement of services, supplies, equipment, and construction will be obtained efficiently and economically and in compliance with the applicable federal laws, and of 2 CFR part 200.317 through 200.326, and Chapter 17 of the Historic Preservation Grants Manual.

**5.2** The process for the selection of subcontractors to perform the services under this Agreement, regardless of whether by competitive bidding or negotiated procurement shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms or individuals in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

**5.3** Competitive bidding or negotiated procurement is required for all survey and planning subcontracts. Proposals shall be requested from an adequate number of sources (at least two or three sources) to permit reasonable competition. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable. The Request for Proposals shall identify the survey or planning area, population, number of properties to be inventoried, funds available and volunteer support (if applicable). The Subgrantee shall document in writing the evaluation criteria used and the results of the technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for subcontract award. Subcontractors shall be selected on the basis of qualification, subject to negotiation of fair and reasonable compensation. Unsuccessful offerors shall be notified promptly. A copy of documentation of the selection process will be submitted to the Grantor prior to the initiation of the project.

**5.4** Noncompetitive negotiation may be used with prior written approval from the Grantor when, after the solicitation in accordance with Section 5.3 above, competition is determined inadequate.

5.5 The Subgrantee will notify the grantor upon the selection of a subcontractor. Subgrantee will verify Subcontractor is not on the debarred list. A copy of this contract will be submitted to the grantor for review and written approval prior to its execution.

5.6 Prior to the beginning of project work or any grant payment, the Subgrantee must submit to the grantor the below listed items to demonstrate that the federal procurement requirements have been met in full:

- a. Copies of the letters to qualified sources and public advertisements requesting proposals and/or invitations to bid;
- b. Copy of the Subgrantee documentation of the selection criteria and process;
- c. A copy of the successful proposal and a description of the Subgrantee reasons for selection;
- d. Listing of the unsuccessful offerors; and
- e. Copy of the proposed contract between the Subgrantee and the subcontractor.

Note: The grantor must review and approve all contracts between the Subgrantee and subcontractors prior to their execution. The parties agree that there will be no assignment or transfer of this Agreement or any interest in the Agreement and that no service required under this Agreement may be performed under subcontract unless both parties agree in writing.

## 6. EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Sections 49-2-303 and 49-3-207 of the Montana Code Annotated and the federal Civil Rights Act of 1964, (as amended) and Equal Employment Opportunity statute, in all hiring or employment made possible by or resulting from this Agreement, the Subgrantee: 1) will not discriminate against any employee or applicant for employment because of race, color, social condition, religion, sex, age, national origin, marital status, creed, political affiliation, or physical or mental handicap; and 2) will 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. This requirement applies to, but is not limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subgrantee will comply with all applicable statutes and Executive Orders on equal employment opportunity, including enforcement provisions, as implemented by, but not limited to, Department of the Interior policies, published in 43 CFR 17.

## 7. FAIR LABOR STANDARDS

The Subgrantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the grantor and the Subgrantee.

## 8. PROHIBITION AGAINST LOBBYING

The Subgrantee must conform to provisions of 18 USC 1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this Section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this Section shall constitute violations of Section 1352(a) of title 31. In addition to the above, the related

restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 161) also apply." Thus, costs associated with activities to influence legislation pending before Congress, commonly referred to as "lobbying" is unallowable under this Agreement.

**9. HOLD HARMLESS/INDEMNIFICATION**

Subgrantee agrees to protect, defend, and save State, its 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 Subgrantee'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 Subgrantee and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this Contract.

**10. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Subgrantee shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Subgrantee nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

**11. COMPLIANCE WITH LAWS**

Subgrantee shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to:

**11.1** The Montana Human Rights Act, Executive Order 11246, as amended, the Equal Pay Act of 1963, Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.), and the Americans with Disabilities Act of 1990, and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

**11.2** In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Subgrantee agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**11.3** The Subgrantee will comply Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794) which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**11.4** The Subgrantee will comply with the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.) prohibiting discrimination on the basis of age in programs and activities receiving Federal Financial assistance.

**11.5** The Subgrantee is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Subgrantee subjects subcontractors to the same provisions.

**11.6** Minority Business Enterprise Development: Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all recipients of its Grant Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.

**11.7** The Subgrantee will comply with paragraph (g) of Section 106 of the Trafficking Victims Protections of 2000, as amended and those award terms put forth in 2 CFR §175.15 <https://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

**Additional Indemnification.** Claims under this provision also include those arising out of or in any way connected with Subgrantee's breach of this contract, including any Claims asserting that any of Subgrantee 's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.

The Subgrantee agrees to comply with all Federal and State wage and hour rules, statutes, and regulations, and warrants that all applicable Federal and State fair labor standards and provisions will be complied with both by the Subgrantee and any subcontractors, in the event that subcontracted services are employed to fulfill the terms and conditions of this Agreement are agreed upon by the SHPO and the Subgrantee.

## **12. DISABILITY ACCOMMODATIONS**

State 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.

## **13. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED**

Subgrantee 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. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

## **14. REGISTRATION WITH THE 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 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

## **15. MODIFICATIONS AND PREVIOUS AGREEMENTS**

**15.1** This instrument contains the entire Agreement between the parties, and no previous statements, promises, or inducements made by either party or agent of either party which are not contained in this written agreement shall be valid or binding. This agreement may not be enlarged, modified, or altered except in writing signed by the parties and attached to the original of this Agreement, except as provided under Section 20. No change, addition, or erasure of any printed portion of this Agreement shall be valid or binding upon either party.

**15.2** Any changes that substantially alter the scope of work or the cost of the approved project must be submitted by the Subgrantee as a project amendment. These amendments must have prior written approval from NPS before the change is implemented. Change orders will be treated as amendments. The Subgrantee must consult with the grantor to review the proposed change to determine if it substantially alters the scope of work or the cost of the approved project. If the grantor determines the change to be substantial, the grantor will process the amendment through NPS. Failure of the Subgrantee to notify the grantor of any such changes may be construed as just cause for revocation and/or recovery of the grant funds by the grantor.

## **16. CONFLICT OF INTEREST**

No officer or employee of the MHS or member of the Society Board or State Historic Preservation Review Board and no member of the Subgrantee's governing body at localities in which the project is situated or being carried out who exercises any functions or responsibilities, or who enjoys a position of influence in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects his or her personal or pecuniary interest. The Subgrantee agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.

## **17. INTELLECTUAL PROPERTY/OWNERSHIP**

**17.1 Mutual Use.** Subgrantee shall make available to the Federal government and the State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part under this contract, if such availability is necessary for the State to receive the benefits of this contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Subgrantee has developed or prepared for the State under this contract; (ii) any program code, or site- related program code that Subgrantee has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

**17.2 Title and Ownership Rights.** The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Content"), but grants Subgrantee the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

**17.3 Ownership of Work Product.** Subgrantee shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

**17.4 Copy of Work Product.** Subgrantee shall, at no cost to the State, deliver to the State, upon the State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

**17.5 Ownership of Subgrantee Pre-Existing Materials.** Subgrantee retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Subgrantee owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Subgrantee in connection with the services provided to State (the "Subgrantee Pre-existing Materials"). Subgrantee Pre-existing Materials are not Work Product. Subgrantee shall provide full disclosure of any Subgrantee Pre-Existing Materials to State before its use and to prove its ownership. If, however, Subgrantee fails to disclose to State such Subgrantee Pre-Existing Materials, Subgrantee shall grant State a nonexclusive, worldwide, paid-up license to use any Subgrantee Pre-Existing Materials embedded in the Work Product to the extent such Subgrantee Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 17.3, Ownership of Work Product, or as may be expressly agreed in any statement of work, Subgrantee shall retain title to and ownership of any hardware it provides under this Contract.

## **18. PATENT AND COPYRIGHT PROTECTION**

**18.1 Third-Party Claim.** If a third party makes a claim against the State that the products furnished under this Contract infringe upon or violate any patent or copyright, the State shall promptly notify Subgrantee. Subgrantee shall defend such claim in the State's name or its own name, as appropriate, but at Subgrantee's expense. Subgrantee shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests

are not being properly protected, or if principles of governmental or public law are involved, it may enter a lawsuit for action.

**18.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Subgrantee may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine whether the Contract has been breached.

**18.3** Except as otherwise provided in the terms and conditions of the grant agreement, the Subgrantee is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty-free, nonexclusive, and irrevocable license throughout the work to the Grantor and/or the US Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

**18.4** Any materials produced as a result of this Agreement which are to be publicly distributed, shall include the following statement:

“The (activity) that is the subject of this (type of publication) has been financed (in part/entirely) with Federal funds from the National Park Service, U.S. Department of Interior, and administered by the SHPO of Montana. The contents and opinions do not necessarily reflect the views or policies of the U.S. Department of the Interior or the Montana Historic Preservation Office, or does the mention of trade names or commercial products constitute endorsement or recommendation by the Department of the Interior or SHPO.”

**18.5** Publications must include the nondiscrimination statement:

“This program receives Federal financial assistance for identification and protection of historic properties. Under Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the U.S. Department of the Interior prohibits discrimination on the basis of race, color, national origin, age, or disability in its federally assisted programs. If you believe you have been discriminated against in any program, activity, or facility as described above, or if you desire further information, please write to:

The Office for Equal Opportunity  
National Park Service  
849 C Street, N.W.  
Washington, D.C. 20240”

**18.6** The Subgrantee shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner that provided SHPO and the United States Government with written permission to use the material in the manner provided herein.

## **19. AUDITING**

The Subgrantee agrees to allow access to the records of the activities covered by this Agreement as may be necessary for legislative post audit and analysis purposes in determining compliance with the terms of this Agreement. The Subgrantor shall maintain all administrative and fiscal records relating to this project for three years after the final grant reimbursement is made by the Grantor to the Subgrantee. Notwithstanding the provisions of Section 20, this Agreement shall automatically terminate upon any refusal of the Subgrantee to allow access to records necessary to carry out the legislative post audit and analysis functions set forth in Title 5 Chapter 12 and 13, MCA and the financial and programmatic audit conducted by the Secretary of the Interior and the Comptroller General of the United States provided for in 2 CFR part 200.333 through 200.338.

For local governments and school districts, the subgrantee will provide the report to the State of Montana, Department of Administration, Local Government Services Bureau. All other subgrantees, such as Tribal Communities and Non-Profit Organizations, will provide the report to the Montana Historical Society, State Historic Preservation Office.



Non-Federal entities that expend \$750,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and 2 CFR Part 200, Subpart F, which is available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=fd6463a517ceea3fa13e665e525051f4&node=sp2.1.200.f&rgn=div6>

Non-Federal entities that expend less than \$750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).

Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 2 CFR Part 200, Subpart F, as applicable. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.

## **20. SEVERABILITY**

It is understood and agreed by the parties hereto that 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 and materially dependent.

**20.1 Termination for Cause with Notice to Cure Requirement.** Subgrantee may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**20.2 Reduction of Funding.** State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Subgrantee the date State's termination shall take effect. State shall not be liable to Subgrantee for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Subgrantee only for the payment, or prorated portion of that payment, owed to Subgrantee up to the date State's termination takes effect. This is Subgrantee's sole remedy. State shall not be liable to Subgrantee for any other payments or damages arising from termination under this Section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **21. EVENT OF BREACH – REMEDIES**

**21.1 Event of Breach by Subgrantee.** Any one or more of the following Subgrantee acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching Section 27, Meetings, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

**21.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**21.3 Actions in Event of Breach.** Upon Subgrantee's material breach, State may:

- Terminate this Contract under Section 20.1, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Subgrantee may:

- Terminate this Contract under Section 20.1, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

## **22. GENERAL AND SPECIFIC CONDITIONS**

The Subgrantee agrees to follow the General and Specific Conditions according to this Agreement and Chapter 5 of the Historic Preservation Fund Grants Manual.

## **23. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **24. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **25. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Subgrantee's expense.

## **26. LIAISONS AND SERVICE OF NOTICES**

**26.1 Contract Liaisons.** All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Subgrantee shall designate a liaison that will provide the single point of contact for management and coordination of Subgrantee's work. All work performed under this Contract must be coordinated between State's liaison and Subgrantee's liaison.

Kate Hampton is State's liaison  
 (Address): MT SHPO, 1301 E. Lockey  
 (City, State, ZIP): Helena, MT 59620-1202  
 Telephone: (406) 444-7742  
 E-mail: khampton@mt.gov

Jim Woodhull is Subgrantee's liaison  
 (Address): 330 Bennett  
 (City, State, ZIP): Livingston MT 59047  
 (Telephone): (406) 222-4903  
 (E-mail): jwoodhull@livingstonmontana.org

## **27. MEETINGS**

Subgrantee shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Subgrantee and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as

problems arise and will be coordinated by State. State shall provide Subgrantee a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Subgrantee's option and expense, a conference call meeting may be substituted. Subgrantee's consistent failure to participate in problem resolution meetings, Subgrantee missing or rescheduling two consecutive meetings, or Subgrantee's failure to make a good faith effort to resolve problems may result in termination of the Contract.

**28. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

**29. TAX EXEMPTION**

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

**30. AUTHORITY**

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**31. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**31.1 Contract.** This Contract consists of 11 (eleven) numbered pages and any Attachments as required. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**31.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**32. WAIVER**

State's waiver of any Subgrantee obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Subgrantee obligation or responsibility.

**33. EXECUTION**

The parties through their authorized agents have executed this Contract on the dates set out below.

STATE OF MONTANA  
Montana Historical Society  
225 North Roberts  
Helena, Montana 59620-1201

CITY OF LIVINGSTON  
414 East Callender Street  
Livingston, MT 59047-2700  
DUNS # 137254368

BY: Denise King/Administrator

BY: \_\_\_\_\_

Centralized Services Division, Montana Historical Society

(Name/Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Backup material for agenda item:**

- B. RESOLUTION NO. 4782 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, REQUESTING DISTRIBUTION OF BRIDGE AND ROAD SAFETY AND ACCOUNTABILITY PROGRAM FUNDS.



Livingston City Commission  
**LEGISLATIVE ACTION SUMMARY**  
Resolution No: 4782

**Requested by:** Paige Fetterhoff, Finance Director

**Date of First Consideration/Status:** March 6, 2018

**Purpose of Legislation:** Approve funding in the amount of \$54,865.25 under the Bridge and Road Safety and Accountability Program (BaRSSA).

**Statutory Authority/Reference:** Local Government Road Construction and Maintenance Match Program (MCA 15-70-130) and Allocation of State Funds for Public Transportation (MCA 7-14-102)

**Background:** House Bill 473 increased the gas tax paid by distributors effective July 1. The additional tax is required to be distributed in the same manner as existing gas tax funds. The State Legislature requires a 5% match of these funds from the receiving government. The City of Livingston will use this funding to help fund the Downtown Capital Improvement Plan with matching funds being generated from the Street Maintenance, Water, Sewer, and Light Maintenance Funds.

**Staff Recommendation:** The City staff recommends approving the acceptance of additional BaRSSA funds.

**Fiscal Impact:** This revenue was included in the FY 18 budget adopted by the commission. It can be found in the Gas Tax Fund under account 335040.

**Regulatory Impact (local):** N/A

**Attachments:** Resolution 4782 and Appendix A to the resolution.

**RESOLUTION NO. 4782**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON,  
MONTANA, REQUESTING DISTRIBUTION OF BRIDGE AND ROAD SAFETY AND  
ACCOUNTABILITY PROGRAM FUNDS.**

**WHEREAS**, the Bridge and Road Safety and Accountability Account created by HB 473 requires the Montana Department of Transportation to allocate accrued funds to cities, towns, counties, and consolidated city-county governments for construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, bridges, or roads and streets that the city, town, county, or consolidated city-county government has the responsibility to maintain; and,

**WHEREAS**, a city, town, county, or consolidated city-county government that requests funds under the Bridge and Road Safety and Accountability Account must match each \$20 requested with \$1 of local government matching funds; and,

**WHEREAS**, a city, town, county, or consolidated city-county government requesting distribution of allocated funds may make such a request to the Department of Transportation between March 1 and November 1 of the year the funds were allocated; and,

**WHEREAS**, a description of the projects to be funded (or the money used to match federal funds) are detailed in Appendix A; and,

**WHEREAS**, the local match for the allocated funds has been budgeted from city reserves in several of its existing funds including, water, sewer, streets, and lights.

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

1. The City of Livingston requests distribution of its share of the allocated Bridge and Road Safety and Accountability funds to be used for the projects identified in Appendix A.
2. That Paige Fetterhoff, the Finance Director of the City of Livingston is hereby empowered and authorized to execute such further documents as may be necessary to facilitate the distribution of said funds.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston,  
this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
DOREL HOGLUND  
Chairperson

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
LISA HARRELD  
Recording Secretary

\_\_\_\_\_  
JAY PORTEEN  
City Attorney

**Resolution No. 4782**  
**Requesting Distribution of Bridge and Road Safety and Accountability Program Funds.**

Beginning in the spring of 2018, the City of Livingston will begin phase I of its downtown area capital improvement plan. This plan will include new streets, water and sewer mains, sidewalks, and, lights. Matching funds for the gas tax fund requested will be provided by city reserves in several of its existing funds including, water, sewer, streets, and lights. The URA will help provide funding to business owners to replace the sidewalks, provide benches, trash receptacles, and big racks. This project is estimated to be completed in phases over the next ten years.

**Backup material for agenda item:**

- C. RESOLUTION NO. 4783 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH PARK COUNTY TO ESTABLISH A CHAPTER IN THE CITY/COUNTY COMPACT CREATING A PLANNING BOARD SUB-COMMITTEE.



**RESOLUTION NO. 4783**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH PARK COUNTY TO ESTABLISH A CHAPTER IN THE CITY/COUNTY COMPACT CREATING A PLANNING BOARD SUB-COMMITTEE.**

**WHEREAS**, the City of Livingston and Park County, Montana are local governmental units of the State of Montana which from time to time have entered into Interlocal Agreements pursuant to 7-11-101 Montana Code Annotated (MCA); and

**WHEREAS**, the City of Livingston Planning Board and the Park County Planning and Development Board have both expressed the interest in creating a sub-committee of the two Boards, to explore growth and development issues in the County's jurisdiction immediately surrounding the City limits;

**WHEREAS**, the sub-committee will report to each Planning Board and any recommendation(s) to the City Commission or the County Commission will come from the full membership of that jurisdiction's Planning Board; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Commission of the City of Livingston, Montana, as follows:

That the City Manager is hereby authorized to sign an Agreement with Park County, Montana creating Chapter 2 – City/County Planning Sub-Committee of the City/County Compact Agreement, attached hereto as Exhibit A.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston, this \_\_\_\_\_ day of March, 2018.

\_\_\_\_\_  
**DOREL HOGLUND - Chairman**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LISA HARRELD**  
**Recording Secretary**

\_\_\_\_\_  
**JAY PORTEEN**  
**City Attorney**

## **Chapter # 2 - PLANNING BOARD SUB-COMMITTEE**

**Expiration Date:** 01 July 2021

**Statutory Authority:** 76-1-101 M.C.A.

**Purpose:** This agreement is made for the purpose of allowing the City Planning Board and the County Planning and Development Board, through a sub-committee of the two Boards, to explore growth and development issues in the County's jurisdiction immediately surrounding the City.

**Governance:** The sub-committee will report to each Planning Board. Any recommendation(s) to the City Commission or the County Commission will come from the full membership of that jurisdiction's Planning Board. Both the City Planning Board and the County Planning and Development Board are advisory to their governing bodies.

**Board Membership:** The sub-committee shall consist of five members as follows: two members of County Planning and Development Board, two members from the City Planning Board, and the Chair of the County Planning and Development Board who is also the County appointee to the City Planning Board. These appointments will be made by the Chairperson of each Planning Board and the terms of the sub-committee shall be coextensive with each appointee's term on their Planning Board.

**Finances:** No additional appropriation is being requested of either the City or the County.

**Contract Administration:** NA.

**Staff Relationships:** Both the City and County Planning Departments will participate in the sub-committee's activities. Other City and County departments will likely be consulted and/or asked to participate at times.

**Employment Records:** NA.

**Professional Contracts:** NA.

**Reporting:** The sub-committee shall report to the two Planning Boards at the Planning Board's regular meetings. In making its reports, the sub-committee may include a minority report signed by at least two sub-committee members. The City Planning Board and the County Planning and Development Board will issue reports on sub-committee activity to their respective governing bodies on a quarterly basis. A final report and any formal recommendations will be issued at the conclusion of the sub-committee's work.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**CITY OF LIVINGSTON**

**COUNTY OF PARK**

\_\_\_\_\_  
**Michael Kardoes – City Manager**

\_\_\_\_\_  
**Steve Caldwell  
Park County Commissioner**

\_\_\_\_\_  
**Clint Tinsley  
Park County Commissioner**

\_\_\_\_\_  
**Bill Berg  
Park County Commissioner**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**Lisa Harreld – Recording Secretary**

\_\_\_\_\_  
**Maritza Reddington  
Park County Clerk and Recorder**

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Jay Porteen  
Livingston City Attorney**

\_\_\_\_\_  
**Bruce Becker  
Park County Attorney**

**Backup material for agenda item:**

- D. RESOLUTION NO. 4784 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A GENERAL SERVICES AGREEMENT WITH COP CONSTRUCTION LLC



Livingston City Commission  
**LEGISLATIVE ACTION SUMMARY**  
Ordinance/Resolution No: 4784

**Requested by:** Michael J. Kardoes, City Manager

**Date of First Consideration/Status:** 2<sup>nd</sup> consideration/Ready for Final Approval

**Purpose of Legislation:** Finalize the budget for the Downtown Capital Improvement Project for Callender, Main and Lewis Street Rehabilitation, authorize the City Manager to sign a General Services Agreement with COP Construction LLC, and authorize the City Manager to execute the agreement to include the use of contingency funds as deemed necessary.

**Statutory Authority/Reference:** Budget Authority/Formal Contract

**Background:** The City of Livingston advertised for bids for the Downtown CIP on 12 Jan 2018. The bid opening was held on 8 Feb 2018. COP Construction LLC was the lowest responsible bidder for Schedules 1, 2 and 3 for the Downtown CIP Project. TD&H Engineering has provided a letter of recommendation to Award the General Services Contract to COP Construction, LLC.

**Staff Recommendation:** Approval of the General Services Contract

**Fiscal Impact:** See attached Fiscal Note

**Regulatory Impact (local):** N/A

**Attachments:**

- Recommendation of Award
- General Services Contract
- Notice of Award
- Fiscal Note

References: City Commission Meeting on 6 Feb 2018

**RESOLUTION NO. 4784**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A GENERAL SERVICES AGREEMENT WITH COP CONSTRUCTION LLC.**

**WHEREAS**, COP Construction, LLC is engaged in the business of providing construction and building services, independent of the City of Livingston, and has the manpower, knowledge, expertise, skills, means, tools, licenses, if applicable, and equipment necessary to perform the tasks required in this project for the City of Livingston; and

**WHEREAS**, the City of Livingston and COP Construction, LLC, desire to define their respective rights, duties and obligations with respect to their relationship and, as a result, they desire to proceed under the terms and conditions contained in the agreement; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Commission of the City of Livingston, Montana, as follows:

On the City of Livingston's behalf, the City Manager is hereby authorized to enter into the General Services Agreement with COP Construction, LLC, which document is attached hereto and incorporated herein as Exhibit A.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
**Dorel Hoglund - Chairman**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LISA HARRELD**  
Recording Secretary

\_\_\_\_\_  
**JAY PORTEEN**  
City Attorney

**Resolution No. 4784**  
**Authorizing the City Manager to sign a General Services Agreement with COP Construction, LLC.**

## GENERAL SERVICE AGREEMENT

THIS GENERAL SERVICE AGREEMENT (this "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **THE CITY OF LIVINGSTON, MONTANA**, a municipal corporation and political subdivision of the state of Montana with its principal office located at 414 East Callender Street, Livingston, MT 59047 (hereinafter referred to as the "City"), and **COP Construction LLC**, with its principal place of business located at 242 S. 64<sup>th</sup> St. West Billings, MT 59106 (hereinafter referred to as the "Contractor"; and together with the City, the "Parties").

### RECITALS:

- A. The Contractor is engaged in the business of providing construction and building services, independent of the City, and has the manpower, knowledge, expertise, skills, means, tools, licenses, if applicable, and equipment necessary to perform tasks required in this project for the City.
- B. The City has or has not (circle one) contracted with the Contractor for services in the past.
- C. The Parties desire to define their respective rights, duties and obligations with respect to their relationship and, as a result, the Parties desire to proceed under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, the Parties agree as follows:

1. INCORPORATION OF RECITALS. The above Recitals are true and correct and are fully incorporated into this Agreement as if fully set forth in this Paragraph 1.
2. NON-DISCRIMINATION. Pursuant to Mont. Code Ann. § 49-3-207, in the performance of this Agreement, the Contractor agrees that all hiring will be on the basis of merit and qualifications and that the Contractor will not be discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
3. SCOPE OF WORK/SERVICES. Contractor shall complete all work as specified or indicated in the construction plans and specifications herein. The Project for which the

work shall be completed may be generally described as the "City of Livingston 2018 CIP".

4. CONTRACT DOCUMENTS. In addition to this Agreement, the contract documents shall consist of the Project Manual and all attachments and exhibits thereto, the Instructions to Bidder, bid, all issued addenda, drawings, the specifications manual, bonds, and insurance certifications as required by the Instructions to Bidder and documents identified therein (the foregoing documents are collectively referred to in this Agreement as the "Contract Documents.") The Contract Documents are collectively attached hereto and incorporated herein as Exhibit A.
  
5. NATURE OF RELATIONSHIP.
  - a. The Contractor states that it is engaged in an established business or profession which is in no way affiliated with or connected to the City, except by this Agreement and that it uses independent judgment in the performance of services provided hereby free from control or direction of others. The Contractor shall perform the Project as an independent contractor. The Parties agree that the City is only interested in the end result of said project, not in the method of performance, and as such, the Contractor has been and will continue to be free from the control or direction of the City in the performance of this Agreement. The Contractor shall not be deemed by virtue of this Agreement nor the performance thereof to have entered into any partnership, joint venture, employer/employee or any other legal relationship with the City besides that of an independent contractor.
  
  - b. The Contractor agrees to comply with all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, both State and Federal, and furthermore agrees to assume full responsibility for the payment of all contributions of all federal and state income or other payroll tax or assessment, social security, worker's compensation insurance, unemployment insurance, self-employment tax or any other required deduction or contribution for himself or for any employees engaged by the Contractor in performance of this Agreement.
  
  - c. **The contractor agrees to follow the Montana Preference law for materials and labor as set forth in 18-1-102 and 18-2-403 MCA. For projects valued in excess of \$25,000.00, the contractor agrees to post the job site with the standard prevailing wage information, to pay his employees the standard prevailing**



**wage as established by the Montana commissioner of Labor and/or the federal government and to maintain records thereof for three years.**

- d. The Contractor hereby states that it is either covered by Worker's Compensation and Unemployment Insurance or has obtained an exemption from the Montana Department of Labor and Industry pursuant to Mont. Code Ann. §§ 39-71-401(3) and 39-51-204(2), as is evidenced by the certificates of insurance or exemption documents attached hereto and incorporated herein as Exhibit A. Any certificates of insurance shall require at least ten (10) days written notice to the City prior to any cancellation, termination, or non-renewal of coverage.
- e. The Contractor, its officers, agents and/or employees shall not have the authority to make representations on behalf of the City, and neither shall the aforementioned persons have the authority to legally bind or otherwise obligate the City to any third person or entity.

6. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. The Contractor represents and warrants as follows:

- a. It and its employees possess all of the necessary qualifications, experience, knowledge, tools and equipment to undertake the performance of the Services as set forth in this Agreement.
- b. It has inspected the job site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the work.
- c. It is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect costs, progress, performance and furnishing the work.
- d. It has reviewed this Agreement and all exhibits hereto and has entered into this Agreement based solely upon its own knowledge, inspection and judgment, and not upon any representations or warranties made by the City or its officers, employees or agents.
- e. It will complete the Services in a workmanlike manner according to industry standards and practices.

f. It will not cause or permit any liens to be filed against City-owned property.

7. ADDITIONAL CONTRACTOR RESPONSIBILITIES. The Contractor shall:

- a. Give employment preference to bona fide Montana residents in the performance of the work.
- b. Pay the travel allowance in effect and applicable to the district in which the work is being performed.
- c. Pay the standard prevailing rate of wages, including fringe benefits, in effect and applicable to the district in which the work is being performed as determined by the Montana Department of Labor and Industry. Information about such wages and fringe benefits must be posted at the job site. The prevailing wage and fringe benefits rates for the current year are attached hereto and incorporated herein as Exhibit C.
- d. Retain records regarding its payment of the standard prevailing rate of wages, including fringe benefits, for a period of three (3) years after the Contractor's completion of work on the Project.

8. CITY'S RESPONSIBILITIES. The City shall:

- a. Provide all of the information regarding any requirements under this Agreement in a timely fashion.
- b. Provide access to City property and easements with respect to the performance of this Agreement

9. PAYMENT.

- a. Subject to additions or deductions by change order, the Contractor shall perform his obligations under this agreement for the contract price two million three hundred twenty nine thousand twenty eight dollars and ninety cents dollars (\$2,329,028.90) as set forth in Section 00300 Bid Form. Pay estimates submitted by Contractor must first be approved by the City or its designee prior to payment. All bills shall be submitted fourteen (14) days before the regularly scheduled meeting of the City Commission to the Assistant Public Works Director at 330 Bennett Street, Livingston, Montana.

- b. In connection with obtaining payment under this Agreement, Contractor agrees to familiarize itself with, and agrees to be bound by, the City's claim procedure, including but not limited to deadlines for submitting claims for approval and payment. The Contractor assumes responsibility for the late filing of a claim.
- c. In the event the Contractor seeks payment or compensation for work, materials or services not included in this Agreement and the exhibits hereto, the Contractor must seek prior written authorization from the City before such expenditure is incurred. If the Contractor fails to obtain prior written authorization, the Contractor shall not be entitled to payment for the unauthorized work, materials or services.

10. TERMINATION.

- a. If the City fails to substantially perform in accordance with the terms of this Agreement, the Contractor shall deliver to the City a written notice specifying the nature of the City's failure to substantially perform. The City shall have a period of ten (10) days after receiving the written notice from the Contractor to cure the failure to perform. If the City fails to cure its failure to perform within the 10-day cure period, the Contractor shall provide the City with a written notice to terminate this Agreement. The Contractor may only terminate this Agreement if it is not at fault for the City's failure to perform. Failure of the City to make payment as provided in this Agreement shall be considered nonperformance and cause for termination, unless the Contractor is at fault for the City's nonpayment.
- b. The City may terminate this Agreement upon not less than ten (10) days prior written notice to Contractor. If the City terminates this Agreement for a reason other than fault of the Contractor, the Contractor shall receive compensation for the work/services performed prior to termination, together with reasonable expenses incurred up to the date of termination.

11. INDEMNIFICATION AND HOLD HARMLESS. To the fullest extent permitted by law, the Contractor shall indemnify the City, its officers, employees, agents and representatives against any and all claims, actions, costs, fees (including but not limited to attorney fees and all defense costs), losses, liabilities or damage of whatever kind or nature arising from or related to Contractor's performance of this Agreement and Contractor's work (or the work of any subcontractor or supplier to Contractor) under this Agreement. In the event a claim should be brought or an action filed against the City

with respect of the subject of this Agreement, Contractor agrees that the City may, at its election, employ attorneys of its own selection to appear and defend the claim or action on behalf of the City, at the expense of the Contractor. City, at its option, shall have the sole authority for the direction of the defense and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the City.

12. INSURANCE AND BONDING. During the term of this Agreement, Contractor shall be responsible for maintaining, at its sole expense, insurance coverage and bonding. The Contractor shall provide the City with certificates of insurance demonstrating such insurance coverage and bonding and the certificates of insurance shall require at least ten (10) days written notice to the City prior to any cancellation, termination, or non-renewal of coverage. The certificates of insurance shall also name the City as an additional insured. The Contractor shall:
- a. Maintain a comprehensive public liability insurance policy, including automobile coverage, insuring against loss and for damages for personal injury or death and/or property loss, damage or destruction arising out of or in connection with the performance of this Agreement by the Contractor, its officers, agents and employees with the minimum liability limit of \$3,000,000.00 per claim and \$1,000,000.00 for each occurrence, as set forth in sections 5 of the bidding documents.
  - b. Maintain workmen's compensation and unemployment insurance, as well as other insurances as may be required by law for employers, or an exemption from the state of Montana.
  - c. Make, execute, and deliver to the City a good a sufficient bond with a surety company licensed in Montana, as surety, conditioned that Contractor shall (i) faithfully perform all of the provisions of this Agreement, (ii) pay all laborers, mechanics, subcontractors, and material suppliers, and (iii) pay all persons who supply the Contractor or subcontractors with provisions, provender, material, or supplies for performing the work.
13. NOTICES. All notices or communications required to be given under this Agreement shall be in writing and shall be deemed to have been duly given by personal delivery or upon deposit into the United States Postal Service, postage prepaid, for mailing by

certified mail, return receipt required and addressed, to the address set forth in this Agreement. Any change of address shall be made by giving written notice thereof to the other party, providing the new address.

14. MODIFICATION AND WAIVER. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default. Nothing herein shall limit the remedies or rights of the parties hereunder and pursuant to this Agreement.
15. SEVERABILITY. Each provision of this Agreement is intended to be severable. If any provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity of said provision shall not affect the validity of the remainder of this Agreement.
16. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the Parties in respect to the Project and supersedes all prior agreements and understandings between the Parties with respect to the Project.
17. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.
18. CAPTIONS, HEADINGS, AND TITLES. All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience or reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or section to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and the masculine, feminine or neuter expressions shall be interchangeable.
19. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
20. PARTIES IN INTEREST AND ASSIGNMENT. This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the Parties

and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties and it does not create a contractual relationship with or exist for the benefit of a third party, including contractors, subcontractors or their sureties. This Agreement shall not be assigned, or any right or obligation hereunder, in whole or in part, to another without first having prior written consent of the other party. No assignment or transfer of any interest under this Agreement shall be deemed to release the contractor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

21. APPLICABLE LAW AND VENUE. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana. The parties stipulate and agree that the Montana Sixth Judicial District Court, Park County, has proper venue and jurisdiction to resolve all causes of action which may accrue in the performance of this Agreement.
22. DISPUTES. It is mutually agreed that the performance or breach of this Agreement and its interpretation shall be governed by the laws of the State of Montana, without regard to its conflicts of law principles.
23. LIAISON. The designated liaison with the City is Shannon Holmes or Matt Whitman, both of whom can be reached at (406) 222-5667. The Contractor's liaison is \_\_\_\_\_, who can be reached at \_\_\_\_\_.
24. GOVERNING LAW. It is mutually agreed that the performance or breach of this Agreement and its interpretation shall be governed by the laws of the State of Montana, without regard to its conflicts of law principles.
25. COMPUTING TIME. For the purpose of calculating time under this Agreement, the following computation shall be used: If the period is stated in days or a longer unit of time, exclude the day of the event that triggers the period, count every day, including intermediate Saturdays, Sundays, and legal holidays, and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

*[Remainder of page intentionally left blank]*

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in Livingston, Montana, the day and year first aforementioned herein.

**City of Livingston**

\_\_\_\_\_  
**(description, "a montana...")**\_\_\_\_\_

\_\_\_\_\_  
**City Manager**

\_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Its:** \_\_\_\_\_



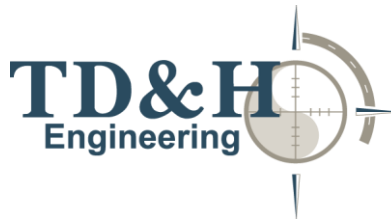


[ Exhibit A ]

[ Certificates of Insurance or Exemptions ]



234 East Babcock Street  
Suite 3  
Bozeman, MT 59715



406.586.0277  
tdhengineering.com

February 20, 2018

Shannon Holmes, Public Works Director  
City of Livingston  
330 North Bennett Street  
Livingston, MT 59047

**RE: CITY OF LIVINGSTON 2018 CIP**  
TD&H ENGINEERING JOB NO. B15-107

Dear Shannon,

TD&H has tabulated the bids from contractors for the 2018 CIP. After an active and successful bidding period, overall seven contractors submitted bids and two contractors bid on the downtown work. All contractors submitted bids to the City of Livingston on February 9, 2018. The tabulated bids are detailed and attached including the engineer's estimate. TD&H did the proper background due diligence for the apparent low bidder for the downtown work, COP Construction, which includes reference checks and requested background summary. This information is also attached this letter.

The low bid for the downtown work came in as follows:

	<u>Engineer's Estimate</u>	<u>Low Bid (COP)</u>	<u>% difference</u>
Schedule I	\$1,508,242.40	\$1,587,975.00	5%
Schedule II	\$ 641,954.50	\$ 695,978.90	8%
Schedule III	\$ 47,661.25	\$ 45,075.00	5%

Although the engineer's estimate was generally a bit low for the downtown work, we are in the acceptable range. Schedules IV-V came in significantly higher than expected, however. The asphalt replacement cost was, on average, twice the cost for asphalt replacement downtown. The water main and water service prices were much higher than engineer's estimate unit cost as well. The bidders were aware that the downtown work is the priority and this may have led to inflated costs for the rehab work in schedules IV-VI.

Prices for Schedule VI are also higher than anticipated. The apparent low bidder for Schedule VI was COP Construction. At this time, we are looking at ways to value engineer the bid and be able to get the work completed in a separate award.

At this time, TD&H recommends that the City of Livingston enter into negotiations with COP Construction for schedules I-III. TD&H has verified that COP Construction has included the following in their bid: Montana Davis Bacon prevailing wages, 1% GRT Tax, and a performance and payment bond.

Once we have approval to enter into negotiations with COP Construction for the downtown work, TD&H will prepare a contract, set up a preconstruction meeting, and oversee the construction of the project.

Please let me know if you have any questions.

Sincerely,



**Keith Waring, PE**  
Civil Engineer/Principal  
**TD&H ENGINEERING**

# Notice of Award

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Date: 2/27/2018

Project: City of Livingston 2018 CIP	
Owner: City of Livingston	Owner's Contract No.:
Contract: Livingston 2018 CIP	Engineer's Project No.: B15-107
Bidder: COP Construction LLC	
Bidder's Address: <i>[send Notice of Award Certified Mail, Return Receipt Requested]</i>	
242 South 64 <sup>th</sup> Street West, Billings, Montana, 59106	

You are notified that your Bid dated 2/9/2018 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for Livingston 2018 CIP Schedules I, II, and III.

*[Indicate total Work, alternates, or sections of Work awarded.]*

The Contract Price of your Contract is two million three hundred twenty nine thousand twenty eight dollars and ninety cents (\$2,329,028.90).

*[Insert appropriate data if unit prices are used. Change language for cost-plus contracts.]*

1 copies of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

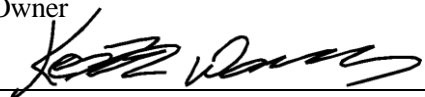
1 sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner [1] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), General Conditions (Paragraph 5.01), and Supplementary Conditions (Paragraph SC-5.01).
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

City of Livingston  
Owner  
By:   
Authorized Signature  
City Engineer  
Title

Copy to Engineer

## CITY OF LIVINGSTON FISCAL NOTE

Ordinance # \_\_\_\_\_  
 Resolution # \_\_\_\_\_

### Fiscal Analysis Assumptions

•This resolution authorizes a construction contract for the completion of Phase I of the downtown CIP

<input checked="" type="checkbox"/> Budgeted Expenditure	<input type="checkbox"/> Unbudgeted Expenditure: <input type="checkbox"/> Unanticipated Revenue <input checked="" type="checkbox"/> Reserves <input type="checkbox"/> Other Line Item Savings
--	--

<u>Costs by Object</u>	<u>FY 18</u>	<u>FY 19</u>	<u>FY 20</u>
Personnel			
Operating			
Capital	\$ 1,587,975	741,054	
Debt Service			
<b>Total Costs</b>	<b><u>\$ 1,587,975</u></b>	<b><u>\$ 741,054</u></b>	<b><u>\$ -</u></b>

<u>Funding Source</u>	<u>FY 18</u>	<u>FY 19</u>	<u>FY 20</u>
Fund Name			
General	\$ 11,312	\$ 17,190	
Light Maint.	58,435	33,215	
Street Maint.	614,719	169,113	
Gax Tax	90,000	150,000	
Water	227,041	116,470	
Sewer	230,262	78,166	
URA	181,253	90,250	
Property Owners	174,953	86,650	
<b>Total</b>	<b><u>\$ 1,587,975</u></b>	<b><u>\$ 741,054</u></b>	<b><u>\$ -</u></b>

Signature Paige Fetterhoff

Date

2/28/2018

**Backup material for agenda item:**

- E. RESOLUTION NO. 4785 - A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A GENERAL SERVICES AGREEMENT WITH EVERGREEN SKATEPARKS, LLC.





Livingston City Commission  
**LEGISLATIVE ACTION SUMMARY**  
Ordinance/Resolution No:

**Requested by:** Michael J. Kardoes, City Manager

**Date of First Consideration/Status:** 6 March 2018, Discussion item in 20 Feb 2018 City Commission Meeting

**Purpose of Legislation:** General Services Agreement approval and authorization for the City Manager to execute the General Services Agreement **to include the use of contingency funds as deemed necessary** with Evergreen Skateparks.

**Statutory Authority/Reference:** Budget Authority

**Background:** The City of Livingston advertised the McNair Skatepark for bid on 5 Jan 2018. The bid opening was held on 26 Jan 2018. It was determined that Evergreen Skateparks was the lowest responsible bidder for the project. The City Administration has provided a letter of recommendation to Award the General Services Agreement to Evergreen Skateparks if the funding is attained. Currently, there is a \$50,000 shortfall in funding. The Skatepark Committee has applied for an additional \$40,000 in grants from local entities and is actively seeking donations for construction of the skatepark.

**Staff Recommendation:** The City Manager has proposed three options to move forward with the Contract Execution and construction of the McNair Skatepark. They are as follows:

- Option 1 Due to insufficient funding, do not approve the General Services Agreement. The current bid will expire on 27 March 2018. Re advertise and rebid the project once all the funding is attained.
- Option 2 Approve the General Services Agreement for an initial reduced scope of work of \$309,000, which includes the contract price for Division 3 and 5 work for Concrete and Metals, \$225,000 and Subgrade Drainage work, \$30,000 and \$54,000 for Additive Alternative #1, or the 2,000 square foot bowl. The remaining balance of \$51,000 would be a contingency that would be approved by the City Manager once the funds are attained.
- Option 3 Approve the General Services Agreement for the full bid amount of \$360,000 and approve the URA providing a bridge loan for the current funding shortfall.

**Fiscal Impact:** The Skatepark Committee currently has \$260,000 of cash and committed funds  
Jeff Ament has committed \$50,000 toward Additive Alternative No. 1  
The current budget shortfall is \$50,000 for the construction of the park.

**Regulatory Impact (local):**

**Attachments:**

General Services Agreement- Option 2

General Services Agreement- Option 3

Jeff Ament written financial commitment

**RESOLUTION NO. 4785**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LIVINGSTON, MONTANA, AUTHORIZING THE CITY MANAGER TO SIGN A GENERAL SERVICES AGREEMENT WITH EVERGREEN SKATEPARKS, LLC.**

**WHEREAS**, Evergreen Skateparks, LLC is engaged in the business of constructing skate parks, independent of the City of Livingston, and has the manpower, knowledge, expertise, skills, means, tools, licenses, if applicable, and equipment necessary to perform this service for the City of Livingston; and

**WHEREAS**, the City of Livingston and Evergreen Skateparks, LLC desire to work together and also desire to define their respective rights, duties and obligations in connection with their relationship and, as a result, the Parties desire to proceed under the terms and conditions contained in the attached agreement; and

**NOW, THEREFORE, BE IT RESOLVED**, by the City Commission of the City of Livingston, Montana, as follows:

On the City of Livingston’s behalf, the City Manager is hereby authorized to enter into the General Services Agreement with Evergreen Skateparks, LLC, which document is attached hereto and incorporated herein as Exhibit A.

**PASSED AND ADOPTED** by the City Commission of the City of Livingston, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
**Dorrel Hoglund - Chairman**

**Resolution No. 4785  
Authorizing the City Manager to sign a General Services Agreement with Evergreen Skateparks, LLC.**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**LISA HARRELD**  
Recording Secretary

\_\_\_\_\_  
**JAY PORTEEN**  
City Attorney

**Resolution No. 4785**  
**Authorizing the City Manager to sign a General Services Agreement with Evergreen**  
**Skateparks, LLC.**

**GENERAL SERVICES AGREEMENT**

THIS GENERAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **THE CITY OF LIVINGSTON, MONTANA**, a municipal corporation and political subdivision of the state of Montana with its principal office located at 414 East Callender Street, Livingston, MT 59047 (hereinafter referred to as the “City”), and **Evergreen Skateparks**, a limited liability company with its principal place of business located at 3604 Bridle Bit Lane Stevensville, MT 59870 (hereinafter referred to as the “Contractor”; and together with the City, the “Parties”).

RECITALS:

- A. The Contractor is engaged in the business of constructing Skate Parks, independent of the City, and has the manpower, knowledge, expertise, skills, means, tools, licenses, if applicable, and equipment necessary to perform construction services for the City.
- B. The City has not contracted with the Contractor for services in the past.
- C. The Parties desire to define their respective rights, duties and obligations in connection with their relationship and, as a result, the Parties desire to proceed under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, the Parties agree as follows:

- 1. INCORPORATION OF RECITALS. The above Recitals are true and correct and are fully incorporated into this Agreement as if fully set forth in this Paragraph 1.
- 2. NON-DISCRIMINATION. Pursuant to Mont. Code Ann. § 49-3-207, in the performance of this Agreement, the Contractor agrees that all hiring will be on the basis of merit and qualifications and the Contractor will not be discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
- 3. SCOPE OF WORK/SERVICES. Contractor shall complete all work as specified or indicated in the construction plans and specifications herein. The Project for which the work shall be completed may be generally described as the “Livingston Skate Park Project.”

4. **CONTRACT DOCUMENTS.** In addition to this Agreement, the contract documents shall consist of the Project Manual and all attachments and exhibits thereto, the Instructions to Bidder, bid, all issued addenda, drawings (with the general title: Livingston Skate Park Project), the specifications manual, bonds, and insurance certifications as required by the Instructions to Bidder and documents identified therein (the foregoing documents are collectively referred to in this Agreement as the “Contract Documents.”) The Contract Documents are collectively attached hereto and incorporated herein as Exhibit A.

5. **NATURE OF RELATIONSHIP.**

- a. The Contractor states that it is engaged in an established business or profession which is in no way affiliated with or connected to the City, except by this Agreement and that it uses independent judgment in the performance of services provided hereby free from control or direction of others. The Contractor shall perform the Project as an independent contractor. The Parties agree that the City is only interested in the end result of said project, not in the method of performance, and as such, the Contractor has been and will continue to be free from the control or direction of the City in the performance of this Agreement. The Contractor shall not be deemed by virtue of this Agreement nor the performance thereof to have entered into any partnership, joint venture, employer/employee or any other legal relationship with the City besides that of an independent contractor.
- b. The Contractor agrees to comply with all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, both State and Federal, and furthermore agrees to assume full responsibility for the payment of all contributions of all federal and state income or other payroll tax or assessment, social security, worker's compensation insurance, unemployment insurance, self-employment tax or any other required deduction or contribution for himself or for any employees engaged by the Contractor in performance of this Agreement.
- c. The contractor agrees to follow the Montana Preference law for materials and labor as set forth in 18-1-102 and 18-2-403 MCA. For projects valued in excess of \$25,000.00, the contractor agrees to post the job site with the standard prevailing wage information, to pay his employees the standard prevailing wage as established by the Montana commissioner of Labor and/or the federal government and to maintain records thereof for three years.

- d. The Contractor hereby states that it is either covered by Worker’s Compensation and Unemployment Insurance or has obtained an exemption from the Montana Department of Labor and Industry pursuant to Mont. Code Ann. §§ 39-71-401(3) and 39-51-204(2), as is evidenced by the certificates of insurance or exemption documents attached hereto and incorporated herein as Exhibit A. Any certificates of insurance shall require at least ten (10) days written notice to the City prior to any cancellation, termination, or non-renewal of coverage.
  - e. The Contractor, its officers, agents and/or employees shall not have the authority to make representations on behalf of the City, and neither shall the aforementioned persons have the authority to legally bind or otherwise obligate the City to any third person or entity.
6. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. The Contractor represents and warrants as follows:
- a. It and its employees possess all of the necessary qualifications, experience, knowledge, tools and equipment to undertake the performance of the Services as set forth in this Agreement.
  - b. It has inspected the job site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the work.
  - c. It is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect costs, progress, performance and furnishing the Services.
  - d. It has reviewed this Agreement and all exhibits hereto and has entered into this Agreement based solely upon its own knowledge, inspection and judgment, and not upon any representations or warranties made by the City or its officers, employees or agents.
  - e. It will complete the Services in a workmanlike manner according to industry standards and practices.
  - f. It will not cause or permit any liens to be filed against City-owned property.

7. ADDITIONAL CONTRACTOR RESPONSIBILITIES. The Contractor shall:

- a. Give employment preference to bona fide Montana residents in the performance of the work.
- b. Pay the travel allowance in effect and applicable to the district in which the work is being performed.
- c. Pay the standard prevailing rate of wages, including fringe benefits, in effect and applicable to the district in which the work is being performed as determined by the Montana Department of Labor and Industry. Information about such wages and fringe benefits must be posted at the job site. The prevailing wage and fringe benefits rates for the current year are attached hereto and incorporated herein as Exhibit C.
- d. Retain records regarding its payment of the standard prevailing rate of wages, including fringe benefits, for a period of three (3) years after the Contractor's completion of work on the Project.

8. CITY'S RESPONSIBILITIES. The City shall:

- a. Provide all of the information regarding any requirements under this Agreement in a timely fashion.
- b. Provide access to City property and easements with respect to the performance of this Agreement

9. PAYMENT.

- a. Subject to additions or deductions by change order, the Contractor shall perform his obligations under this agreement for the contract price **Three Hundred Nine Thousand (\$309,000.00)**. Two Hundred Fifty Five and No/100 Dollars (\$255,000) of the contract price shall be for Division 3 and 5 (Concrete + Metals, Subgrade Drainage Work) and Fifty Four Thousand and No/100 (\$54,000) shall be for the Additive Alternate #1. The parties may agree to additional obligations for the contract price of Fifty One Thousand and No/100 Dollars (\$51,000) in the event the City has the funds and desire to complete Division 31 and 32 (Site Grading Work, Landscaping). Pay estimates submitted by Contractor must first be approved by the City or its designee prior to payment. All bills shall be submitted fourteen (14)



days before the regularly scheduled meeting of the City Commission to the Public Works Director at 330 Bennett Street, Livingston, Montana.

- b. In connection with obtaining payment under this Agreement, Contractor agrees to familiarize itself with, and agrees to be bound by, the City's claim procedure, including but not limited to deadlines for submitting claims for approval and payment. The Contractor assumes responsibility for the late filing of a claim.
- c. In the event the Contractor seeks payment or compensation for work, materials or services not included in this Agreement and the exhibits hereto, the Contractor must seek prior written authorization from the City before such expenditure is incurred. If the Contractor fails to obtain prior written authorization, the Contractor shall not be entitled to payment for the unauthorized work, materials or services.

10. TERMINATION.

- a. If the City fails to substantially perform in accordance with the terms of this Agreement, the Contractor shall deliver to the City a written notice specifying the nature of the City's failure to substantially perform. The City shall have a period of ten (10) days after receiving the written notice from the Contractor to cure the failure to perform. If the City fails to cure its failure to perform within the 10-day cure period, the Contractor shall provide the City with a written notice to terminate this Agreement. The Contractor may only terminate this Agreement if it is not at fault for the City's failure to perform. Failure of the City to make payment as provided in this Agreement shall be considered nonperformance and cause for termination, unless the Contractor is at fault for the City's nonpayment.
- b. The City may terminate this Agreement upon not less than ten (10) days prior written notice to Contractor. If the City terminates this Agreement for a reason other than fault of the Contractor, the Contractor shall receive compensation for the work/services performed prior to termination, together with reasonable expenses incurred up to the date of termination.

11. INDEMNIFICATION AND HOLD HARMLESS. To the fullest extent permitted by law, the Contractor shall indemnify the City, its officers, employees, agents and representatives against any and all claims, actions, costs, fees (including but not limited to attorney fees and all defense costs), losses, liabilities or damage of whatever kind or nature arising from or related to Contractor's performance of this

Agreement and Contractor's work (or the work of any subcontractor or supplier to Contractor) under this Agreement. In the event a claim should be brought or an action filed against the City with respect of the subject of this Agreement, Contractor agrees that the City may, at its election, employ attorneys of its own selection to appear and defend the claim or action on behalf of the City, at the expense of the Contractor. City, at its option, shall have the sole authority for the direction of the defense and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the City.

12. INSURANCE AND BONDING. During the term of this Agreement, Contractor shall be responsible for maintaining, at its sole expense, insurance coverage and bonding. The Contractor shall provide the City with certificates of insurance demonstrating such insurance coverage and bonding and the certificates of insurance shall require at least ten (10) days written notice to the City prior to any cancellation, termination, or non-renewal of coverage. The certificates of insurance shall also name the City as an additional insured. The Contractor shall:
  - a. Maintain a comprehensive public liability insurance policy, including automobile coverage, insuring against loss and for damages for personal injury or death and/or property loss, damage or destruction arising out of or in connection with the performance of this Agreement by the Contractor, its officers, agents and employees with the minimum liability limit of \$3,000,000.00 per claim and \$1,000,000.00 for each occurrence, as set forth in sections 5 of the bidding documents.
  - b. Maintain workmen's compensation and unemployment insurance, as well as other insurances as may be required by law for employers, or an exemption from the state of Montana.
  - c. Make, execute, and deliver to the City a good a sufficient bond with a surety company licensed in Montana, as surety, conditioned that Contractor shall (i) faithfully perform all of the provisions of this Agreement, (ii) pay all laborers, mechanics, subcontractors, and material suppliers, and (iii) pay all persons who supply the Contractor or subcontractors with provisions, provender, material, or supplies for performing the work.
13. NOTICES. All notices or communications required to be given under this Agreement shall be in writing and shall be deemed to have been duly given by personal delivery

or upon deposit into the United States Postal Service, postage prepaid, for mailing by certified mail, return receipt required and addressed, to the address set forth in this Agreement. Any change of address shall be made by giving written notice thereof to the other party, providing the new address.

- 14. MODIFICATION AND WAIVER. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default. Nothing herein shall limit the remedies or rights of the parties hereunder and pursuant to this Agreement.
  
- 15. SEVERABILITY. Each provision of this Agreement is intended to be severable. If any provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity of said provision shall not affect the validity of the remainder of this Agreement.
  
- 16. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the Parties in respect to the Services and supersedes all prior agreements and understandings between the Parties with respect to the Services.
  
- 17. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.
  
- 18. CAPTIONS, HEADINGS, AND TITLES. All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience or reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or section to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and the masculine, feminine or neuter expressions shall be interchangeable.
  
- 19. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

- 20. PARTIES IN INTEREST AND ASSIGNMENT. This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the Parties and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties and it does not create a contractual relationship with or exist for the benefit of an third party, including contractors, subcontractors or their sureties. This Agreement shall not be assigned, or any right or obligation hereunder, in whole or in part, to another without first having prior written consent of the other party. No assignment or transfer of any interest under this Agreement shall be deemed to release the contractor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.
  
- 21. APPLICABLE LAW AND VENUE. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana. The parties stipulate and agree that the Montana Sixth Judicial District Court, Park County, has proper venue and jurisdiction to resolve all causes of action which may accrue in the performance of this Agreement.
  
- 22. DISPUTES. It is mutually agreed that the performance or breach of this Agreement and its interpretation shall be governed by the laws of the State of Montana, without regard to its conflicts of law principles.
  
- 23. LIAISON. The designated liaison with the City is Shannon Holmes or Matt Whitman, both of whom can be reached at (406) 222-5667. The Contractor’s liaison is Billy Covlan, who can be reached at (503) 807-0103.
  
- 24. GOVERNING LAW. It is mutually agreed that the performance or breach of this Agreement and its interpretation shall be governed by the laws of the State of Montana, without regard to its conflicts of law principles.
  
- 25. COMPUTING TIME. For the purpose of calculating time under this Agreement, the following computation shall be used: If the period is stated in days or a longer unit of time, exclude the day of the event that triggers the period, count every day, including intermediate Saturdays, Sundays, and legal holidays, and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in Livingston, Montana, the day and year first aforementioned herein.

**City of Livingston**

**Contractor**\_\_\_\_\_

\_\_\_\_\_  
**City Manager**

\_\_\_\_\_  
**Name:** \_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Its:** \_\_\_\_\_

\_\_\_\_\_  
**Date**

[ Exhibit A ]

[ Certificates of WC and UE Insurance or Exemptions ]

**Exhibit B**

**[ Certificates of Insurance ]**

**GENERAL SERVICES AGREEMENT**

THIS GENERAL SERVICES AGREEMENT (this “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **THE CITY OF LIVINGSTON, MONTANA**, a municipal corporation and political subdivision of the state of Montana with its principal office located at 414 East Callender Street, Livingston, MT 59047 (hereinafter referred to as the “City”), and **Evergreen Skateparks**, a limited liability company with its principal place of business located at 3604 Bridle Bit Lane Stevensville, MT 59870 (hereinafter referred to as the “Contractor”; and together with the City, the “Parties”).

RECITALS:

- A. The Contractor is engaged in the business of constructing Skate Parks, independent of the City, and has the manpower, knowledge, expertise, skills, means, tools, licenses, if applicable, and equipment necessary to perform construction services for the City.
- B. The City has not contracted with the Contractor for services in the past.
- C. The Parties desire to define their respective rights, duties and obligations in connection with their relationship and, as a result, the Parties desire to proceed under the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, the Parties agree as follows:

- 1. INCORPORATION OF RECITALS. The above Recitals are true and correct and are fully incorporated into this Agreement as if fully set forth in this Paragraph 1.
- 2. NON-DISCRIMINATION. Pursuant to Mont. Code Ann. § 49-3-207, in the performance of this Agreement, the Contractor agrees that all hiring will be on the basis of merit and qualifications and the Contractor will not be discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.
- 3. SCOPE OF WORK/SERVICES. Contractor shall complete all work as specified or indicated in the construction plans and specifications herein. The Project for which the work shall be completed may be generally described as the “Livingston Skate Park Project.”



4. **CONTRACT DOCUMENTS.** In addition to this Agreement, the contract documents shall consist of the Project Manual and all attachments and exhibits thereto, the Instructions to Bidder, bid, all issued addenda, drawings (with the general title: Livingston Skate Park Project), the specifications manual, bonds, and insurance certifications as required by the Instructions to Bidder and documents identified therein (the foregoing documents are collectively referred to in this Agreement as the “Contract Documents.”) The Contract Documents are collectively attached hereto and incorporated herein as Exhibit A.

5. **NATURE OF RELATIONSHIP.**

- a. The Contractor states that it is engaged in an established business or profession which is in no way affiliated with or connected to the City, except by this Agreement and that it uses independent judgment in the performance of services provided hereby free from control or direction of others. The Contractor shall perform the Project as an independent contractor. The Parties agree that the City is only interested in the end result of said project, not in the method of performance, and as such, the Contractor has been and will continue to be free from the control or direction of the City in the performance of this Agreement. The Contractor shall not be deemed by virtue of this Agreement nor the performance thereof to have entered into any partnership, joint venture, employer/employee or any other legal relationship with the City besides that of an independent contractor.
- b. The Contractor agrees to comply with all applicable laws, rules and regulations adopted or promulgated by any governmental agency or regulatory body, both State and Federal, and furthermore agrees to assume full responsibility for the payment of all contributions of all federal and state income or other payroll tax or assessment, social security, worker's compensation insurance, unemployment insurance, self-employment tax or any other required deduction or contribution for himself or for any employees engaged by the Contractor in performance of this Agreement.
- c. The contractor agrees to follow the Montana Preference law for materials and labor as set forth in 18-1-102 and 18-2-403 MCA. For projects valued in excess of \$25,000.00, the contractor agrees to post the job site with the standard prevailing wage information, to pay his employees the standard prevailing wage as established by the Montana commissioner of Labor and/or the federal government and to maintain records thereof for three years.

- d. The Contractor hereby states that it is either covered by Worker’s Compensation and Unemployment Insurance or has obtained an exemption from the Montana Department of Labor and Industry pursuant to Mont. Code Ann. §§ 39-71-401(3) and 39-51-204(2), as is evidenced by the certificates of insurance or exemption documents attached hereto and incorporated herein as Exhibit A. Any certificates of insurance shall require at least ten (10) days written notice to the City prior to any cancellation, termination, or non-renewal of coverage.
  - e. The Contractor, its officers, agents and/or employees shall not have the authority to make representations on behalf of the City, and neither shall the aforementioned persons have the authority to legally bind or otherwise obligate the City to any third person or entity.
6. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. The Contractor represents and warrants as follows:
- a. It and its employees possess all of the necessary qualifications, experience, knowledge, tools and equipment to undertake the performance of the Services as set forth in this Agreement.
  - b. It has inspected the job site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the work.
  - c. It is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect costs, progress, performance and furnishing the Services.
  - d. It has reviewed this Agreement and all exhibits hereto and has entered into this Agreement based solely upon its own knowledge, inspection and judgment, and not upon any representations or warranties made by the City or its officers, employees or agents.
  - e. It will complete the Services in a workmanlike manner according to industry standards and practices.
  - f. It will not cause or permit any liens to be filed against City-owned property.

- 7. ADDITIONAL CONTRACTOR RESPONSIBILITIES. The Contractor shall:
  - a. Give employment preference to bona fide Montana residents in the performance of the work.
  - b. Pay the travel allowance in effect and applicable to the district in which the work is being performed.
  - c. Pay the standard prevailing rate of wages, including fringe benefits, in effect and applicable to the district in which the work is being performed as determined by the Montana Department of Labor and Industry. Information about such wages and fringe benefits must be posted at the job site. The prevailing wage and fringe benefits rates for the current year are attached hereto and incorporated herein as Exhibit C.
  - d. Retain records regarding its payment of the standard prevailing rate of wages, including fringe benefits, for a period of three (3) years after the Contractor's completion of work on the Project.
  
- 8. CITY'S RESPONSIBILITIES. The City shall:
  - a. Provide all of the information regarding any requirements under this Agreement in a timely fashion.
  - b. Provide access to City property and easements with respect to the performance of this Agreement
  
- 9. PAYMENT.
  - a. Subject to additions or deductions by change order, the Contractor shall perform his obligations under this agreement for the contract price **Three Hundred Sixty Thousand (\$360,000.00)** as set forth in Section 00300 Bid Form. Pay estimates submitted by Contractor must first be approved by the City or its designee prior to payment. All bills shall be submitted fourteen (14) days before the regularly scheduled meeting of the City Commission to the Public Works Director at 330 Bennett Street, Livingston, Montana.
  - b. In connection with obtaining payment under this Agreement, Contractor agrees to familiarize itself with, and agrees to be bound by, the City's claim procedure,

including but not limited to deadlines for submitting claims for approval and payment. The Contractor assumes responsibility for the late filing of a claim.

- c. In the event the Contractor seeks payment or compensation for work, materials or services not included in this Agreement and the exhibits hereto, the Contractor must seek prior written authorization from the City before such expenditure is incurred. If the Contractor fails to obtain prior written authorization, the Contractor shall not be entitled to payment for the unauthorized work, materials or services.

10. TERMINATION.

- a. If the City fails to substantially perform in accordance with the terms of this Agreement, the Contractor shall deliver to the City a written notice specifying the nature of the City’s failure to substantially perform. The City shall have a period of ten (10) days after receiving the written notice from the Contractor to cure the failure to perform. If the City fails to cure its failure to perform within the 10-day cure period, the Contractor shall provide the City with a written notice to terminate this Agreement. The Contractor may only terminate this Agreement if it is not at fault for the City’s failure to perform. Failure of the City to make payment as provided in this Agreement shall be considered nonperformance and cause for termination, unless the Contractor is at fault for the City’s nonpayment.
- b. The City may terminate this Agreement upon not less than ten (10) days prior written notice to Contractor. If the City terminates this Agreement for a reason other than fault of the Contractor, the Contractor shall receive compensation for the work/services performed prior to termination, together with reasonable expenses incurred up to the date of termination.

11. INDEMNIFICATION AND HOLD HARMLESS. To the fullest extent permitted by law, the Contractor shall indemnify the City, its officers, employees, agents and representatives against any and all claims, actions, costs, fees (including but not limited to attorney fees and all defense costs), losses, liabilities or damage of whatever kind or nature arising from or related to Contractor’s performance of this Agreement and Contractor’s work (or the work of any subcontractor or supplier to Contractor) under this Agreement. In the event a claim should be brought or an action filed against the City with respect of the subject of this Agreement, Contractor agrees that the City may, at its election, employ attorneys of its own selection to appear and defend the claim or action on behalf of the City, at the expense of the

Contractor. City, at its option, shall have the sole authority for the direction of the defense and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against the City.

12. INSURANCE AND BONDING. During the term of this Agreement, Contractor shall be responsible for maintaining, at its sole expense, insurance coverage and bonding. The Contractor shall provide the City with certificates of insurance demonstrating such insurance coverage and bonding and the certificates of insurance shall require at least ten (10) days written notice to the City prior to any cancellation, termination, or non-renewal of coverage. The certificates of insurance shall also name the City as an additional insured. The Contractor shall:

- a. Maintain a comprehensive public liability insurance policy, including automobile coverage, insuring against loss and for damages for personal injury or death and/or property loss, damage or destruction arising out of or in connection with the performance of this Agreement by the Contractor, its officers, agents and employees with the minimum liability limit of \$3,000,000.00 per claim and \$1,000,000.00 for each occurrence, as set forth in sections 5 of the bidding documents.
- b. Maintain workmen's compensation and unemployment insurance, as well as other insurances as may be required by law for employers, or an exemption from the state of Montana.
- c. Make, execute, and deliver to the City a good a sufficient bond with a surety company licensed in Montana, as surety, conditioned that Contractor shall (i) faithfully perform all of the provisions of this Agreement, (ii) pay all laborers, mechanics, subcontractors, and material suppliers, and (iii) pay all persons who supply the Contractor or subcontractors with provisions, provender, material, or supplies for performing the work.

13. NOTICES. All notices or communications required to be given under this Agreement shall be in writing and shall be deemed to have been duly given by personal delivery or upon deposit into the United States Postal Service, postage prepaid, for mailing by certified mail, return receipt required and addressed, to the address set forth in this Agreement. Any change of address shall be made by giving written notice thereof to the other party, providing the new address.

14. MODIFICATION AND WAIVER. No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default. Nothing herein shall limit the remedies or rights of the parties hereunder and pursuant to this Agreement.
15. SEVERABILITY. Each provision of this Agreement is intended to be severable. If any provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity of said provision shall not affect the validity of the remainder of this Agreement.
16. ENTIRE AGREEMENT. This Agreement contains the entire understanding of the Parties in respect to the Services and supersedes all prior agreements and understandings between the Parties with respect to the Services.
17. TIME IS OF THE ESSENCE. Time is of the essence in the performance of this Agreement.
18. CAPTIONS, HEADINGS, AND TITLES. All captions, headings, or titles in the paragraphs or sections of this Agreement are inserted for convenience or reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or section to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and the masculine, feminine or neuter expressions shall be interchangeable.
19. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.
20. PARTIES IN INTEREST AND ASSIGNMENT. This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the Parties and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the Parties and it does not create a contractual relationship with or exist for the benefit of an third party, including contractors,

subcontractors or their sureties. This Agreement shall not be assigned, or any right or obligation hereunder, in whole or in part, to another without first having prior written consent of the other party. No assignment or transfer of any interest under this Agreement shall be deemed to release the contractor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

- 21. APPLICABLE LAW AND VENUE. This Agreement and the rights and obligations of the Parties shall be governed by and interpreted in accordance with the laws of the State of Montana. The parties stipulate and agree that the Montana Sixth Judicial District Court, Park County, has proper venue and jurisdiction to resolve all causes of action which may accrue in the performance of this Agreement.
- 22. DISPUTES. It is mutually agreed that the performance or breach of this Agreement and its interpretation shall be governed by the laws of the State of Montana, without regard to its conflicts of law principles.
- 23. LIAISON. The designated liaison with the City is Shannon Holmes or Matt Whitman, both of whom can be reached at (406) 222-5667. The Contractor’s liaison is Billy Covlan, who can be reached at (503) 807-0103.
- 24. GOVERNING LAW. It is mutually agreed that the performance or breach of this Agreement and its interpretation shall be governed by the laws of the State of Montana, without regard to its conflicts of law principles.
- 25. COMPUTING TIME. For the purpose of calculating time under this Agreement, the following computation shall be used: If the period is stated in days or a longer unit of time, exclude the day of the event that triggers the period, count every day, including intermediate Saturdays, Sundays, and legal holidays, and include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in Livingston, Montana, the day and year first aforementioned herein.

**City of Livingston**

**Contractor**\_\_\_\_\_

\_\_\_\_\_  
**City Manager**

\_\_\_\_\_  
**Name:** \_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Its:** \_\_\_\_\_

\_\_\_\_\_  
**Date**



[ Exhibit A ]

[ Certificates of WC and UE Insurance or Exemptions ]

**Exhibit B**

**[ Certificates of Insurance ]**

**Shannon W. Holmes**  
*Public Works Director*

**Matt Whitman**  
*Project Manager*

**Almira Johansson**  
*Administrative Assistant*

330 Bennett Street  
Livingston, MT 59047  
Phone: (406) 222-5667



[www.livingstonmontana.org](http://www.livingstonmontana.org)

**Tom Schweigert** 91  
*Water / Sewer*

**Craig Hahn**  
*Streets*

**Rich Stordalen**  
*Transfer Station*

**Eric Schneider**  
*Parks*

**Dan Emter**  
*Waste Reclamation Facility*

## Memo

TO: Michael Kardoes  
FROM: Shannon Holmes  
RE: Recommendation of Award for McNair Gravity Park

Contractor bids were received and opened on January 26<sup>th</sup>, 2018, for the McNair Gravity Park. Based on the bid tabulations and contractor references, Public Works Administration recommends award of the project to Evergreen Skateparks, LLC, 3604 Bridle Bit Lane, Stevensville, Montana 59870, (503) 807-0103, for the Base Bid amount of \$306,000 and include the Additive Alternative of \$54,000.00. This approval is contingent on the City of Livingston acquiring the funding for the bid amount for construction of the McNair Skatepark.

I would be happy to answer any additional questions you might have.

Shannon Holmes  
Public Works Director



*Dear Livingston City Council,*

*Montana Pool Service is committed to a donation of \$50,000. This is specifically for the 2,000 sq foot bowl section of the park.*

*I'm very enthusiastic about the new addition to your park system.*

*Congratulations,  
Jeff Ament*

**Backup material for agenda item:**

- A. DISCUSS/APPROVE/DENY - Laura Rhodes, DVM regarding fee waiver for civic center for clinic for rattlesnake vaccination clinic

Laurel Rhodes  
117 S Main St. Apt B2  
Livingston, MT 59047

February 27, 2018

Livingston City Commission  
414 East Callender St.  
Livingston, MT 59047

Dear City Commissioners,

I am writing to you to request a fee waiver for use of the Civic Center to offer a canine rattlesnake vaccination clinic on March 17 and April 14, 2018. Currently, I am a self-employed veterinarian licensed in Montana and Hawaii who has practiced veterinary medicine in non-profit settings for most of my 23 year career. Rattlesnake vaccination has been available since 2004, but is less well known than many core and optional dog vaccines. There is no current field validation of the vaccine's efficacy, but experience among veterinarians indicates adverse clinical signs from venomous snake bites are milder in vaccinated dogs than in dogs who are not vaccinated. I view the rattlesnake vaccine as beneficial to local dogs and would like to increase community awareness of its availability in a low cost setting.

Below please find information about Red Rock Biologics rattlesnake vaccine use and benefit as well as rattlesnake education and tips for avoidance.

Thank you for your consideration.

Sincerely,

Laurel Rhodes, DVM

## **Rattlesnake vaccine FAQ**

### **Q. Which dogs should receive Rattlesnake Vaccine?**

**A.** Any dog over four months of age that is exposed to rattlesnakes whether at home, walking, hiking, camping, hunting, or elsewhere might be a good candidate for rattlesnake vaccine.

### **Q. How dangerous are rattlesnake bites to dogs?**

**A.** Rattlesnake bites are about 25 times more fatal in dogs than in humans. Even dogs that survive the bite can be permanently damaged.

### **Q. How safe is rattlesnake vaccine for pets?**

**A.** Rattlesnake vaccine is laboratory tested, government approved, and has been used in over one hundred thousand dogs over many years. Thousands of veterinary clinics nationwide recommend this vaccine for dogs at risk. The side effects are rare and typically very mild. About 1% of dogs may get a temporary lump at the injection site that doesn't bother the dog and goes away by its self in a few weeks. Temporary flu like symptoms are reported in about one in 3,000 vaccinations and other miscellaneous symptoms are reported in fewer than one in 15,000 vaccinations. These systemic symptoms are rare, and don't appear to have any pattern, so it is possible that many are coincidental and unrelated to the vaccine use. Even the most severe side effect reasonably attributable to the vaccine is likely to be much easier for a veterinarian to treat than a moderate rattlesnake bite.

### **Q. How is rattlesnake vaccine different from antivenin (anti-venom)?**

**A.** Rattlesnake vaccine is a preventative whereas antivenin is a treatment for rattlesnake bites. The vaccine stimulates a dog to create his own antibodies to rattlesnake venom that will protect him from bites that happen in the future.

Antivenin is antibodies made from another animal (usually a horse or sheep) that are injected into a dog after he is bitten by a venomous snake.

### **Q. How often should a dog get booster vaccinations, how long does it last?**

**A.** A dog should get at least two doses about 30 days apart in the initial vaccination sequence. If the dog is exposed to rattlesnakes about six months per year, he will only need one booster per year about 30 days before the beginning of that exposure season. If the dog is exposed to much longer rattlesnake seasons or year around risks, he should be given a booster dose every six months.



**Q. Should small dogs get this vaccine even if they don't produce as many total antibodies as large dogs?**

A. Yes. A smaller dog is always going to have a harder time fighting off the same amount of venom as a larger dog and will need all the help he can get. The protection that the rattlesnake vaccine gives to a smaller dog may be enough to help save his life or help him recover more quickly. Red Rock Biologics recommends dogs weighing less than 25 receive an initial series of 3 vaccines, then booster normally..

**Q. If a dog is exposed to rattlesnakes from about April through about October, gets his first vaccine shot in July and his second rattlesnake vaccine in August, when should he get his next regular booster?**

A. March, or about 30 days before the beginning of his next expected exposure season to rattlesnakes. Protection from vaccination boosters last about six months.

**Q. Can a dog receive the vaccine if he has already been bitten by a rattlesnake and had antivenin (anti-venom)?**

A. Yes. Since there are no horse or sheep proteins in rattlesnake vaccine, there it can be safely used in dogs that have been bitten by rattlesnakes and had antivenin (anti-venom) before. Red Rock Biologics recommends waiting at least 30 days after the dog has recovered from any previous snake bite before starting or continuing vaccination.

## **RATTLESNAKE VACCINE FOR DOGS**

Rattlesnakes are venomous serpents that are found throughout North America and elsewhere. They can live in most climates and are present in Montana.

### **Rattlesnake Facts**

Rattlesnakes are pit vipers, which means that they have a small indentation, or pit, between their eye and nostril. This is a sensory organ that detects the heat of the rattlesnake's prey. Rattlesnakes live in dens, which may be holes in the ground, crevices in rocks, or hollowed logs. In cooler climates, they hibernate during the fall and winter seasons. They are not nocturnal, but in hot weather, they are often more active at night. A rattlesnake's venom is meant to kill its prey. Most rattlesnakes' venom is hemotoxic. This means that it disrupts the integrity of the victim's blood vessels, resulting in pain, tissue damage, and internal bleeding. If the bite is on the throat or face, the resultant swelling can cause death due to airway closure, as well. Some rattlesnakes have neurotoxic venom, which attacks the nervous system and results in paralysis.

## **Rattlesnake Bites in Dogs**

Dogs are especially prone to rattlesnake bites because they are curious, often nosing around in logs, under rocks and leaves, and in holes in the ground. They may also feel protective of their humans if they come across a rattlesnake during a hike and attack it in defense of their person.

## **Rattlesnake Treatment in Dogs**

The treatment of rattlesnake bite in dogs includes the following:

Hospitalization

Administration of antivenin : this can cost close to \$1000 at local veterinary hospitals

Antibiotics

Intravenous fluids

Pain medications

Many dogs die each year from rattlesnake bites, and many more are permanently injured.

## **How is Rattlesnake Vaccine different from antivenin (anti-venom)**

Rattlesnake vaccine provides preventative immunity whereas antivenin is a treatment for rattlesnake bites. The vaccine stimulates a dog to create his own antibodies to rattlesnake venom that will protect him from bites that happen in the future.

Antivenin is antibodies made from another animal (usually a horse or sheep) that are injected into a dog after he is bitten by a venomous snake.

## **Rattlesnake Vaccine for Dogs**

Red Rock Biologics provides a rattlesnake vaccine for dogs. It was approved by the USDA in 2004. This vaccine is designed to help the dog develop antibodies in response to the appearance of rattlesnake venom in the body. These antibodies can result in less pain and tissue damage in the area of the bite, more time to get to a veterinary clinic after a bite, and potentially less need for antivenin and other treatment.

This vaccine protects against the venom of the Western Diamondback rattlesnake. It may provide some degree of cross-protection for the venom of several related rattlesnakes, such as:

Western rattlesnake

Sidewinder

Timber rattlesnake

Massasauga rattlesnake

Copperhead

Eastern Diamondback rattlesnake

This vaccine does not protect against the venom of the water moccasin, Mojave rattlesnake, or Coral snake (Red RockBiologics).

### **How Well Does the Rattlesnake Vaccine for Dogs Work?**

The vaccine is not fully-protective; it will not completely mitigate the effects of a rattlesnake bite. How well it works for a dog that is bitten by a rattlesnake depends on the type of snake, the amount of venom delivered during the bite, the size of the dog, the size and age of the snake, and the location of the bite. However, dogs that are bitten by the types of rattlesnakes listed above often experience less pain and swelling, and have a faster recovery when they have been previously vaccinated.

- ★ Snakebite is always an emergency, even if your dog has received the rattlesnake vaccine. You should take your dog to the veterinarian immediately if he is bitten by a snake of any kind. Your veterinarian will determine whether your dog needs antivenin or any other additional treatment.

### **Getting the Best Response from Your Dog's Rattlesnake Vaccine**

The effectiveness of the rattlesnake vaccine can be increased by adhering to the following guidelines:

A dog's first dose of rattlesnake vaccine should be given no sooner than four months of age. This is because the safety of the vaccine hasn't been evaluated in puppies younger than that.

The first time your dog is given the rattlesnake vaccine, it needs to be re-administered, or boosted, in one month. Very small and very large dogs may require a third booster in this initial sequence.

The vaccine is most protective about four to six weeks following its administration. Its effectiveness slowly declines after that.

In areas of the country where rattlesnakes are active for only part of the year, a single vaccine given about one month before the start of the "rattlesnake season" is probably sufficient. This is usually early spring. In areas where rattlesnakes are active all year, your veterinarian may recommend boosters every four to six months.

Consider the vaccine even if you do not live in a rattlesnake-endemic area if you plan to take your dog to such an area for a visit or to spend part of the year.

### **Safety of the Rattlesnake Vaccine in Dogs**

This vaccine is licensed for use in dogs in the US. There is a different vaccine licensed for horses. There have not been many side effects reported in conjunction with this vaccine, according to Red Rock Biologics. They report the following side effects:

Mild swelling at the site of the vaccine injection is possible and resolves on its own.

More serious allergic reactions resulting in vomiting, diarrhea, and lethargy are even rarer.

Very serious allergic reactions including anaphylaxis have only been reported in between one and three dogs per million vaccines given.

The rattlesnake vaccine should only be given to healthy dogs. Your veterinarian is best-suited to evaluate whether your dog should receive the vaccine, how many initial boosters he needs, and how often the vaccine should be boosted after that.

### **Tips for Avoiding Rattlesnake Bites in Dogs**

A rattlesnake bite is an emergency, whether or not your dog has been vaccinated. Below are some tips to help you avoid rattlesnake bites in your dog:

Keep your dog on a leash when hiking.

Avoid areas of tall grass.

If you come upon a rattlesnake, stay calm and back away slowly with your dog.

Don't allow your dog to root around in holes in the ground, crevices in rocks, or under brush piles.

Don't allow your dog to investigate a dead snake. Newly-dead snakes can have muscle reactions that result in bites.

Don't walk in rattlesnake areas at dusk. In the summertime, snakes are more active just after the sun goes down and at night.

## References

Red Rock Biologics. (n.d.). Rattlesnake Vaccine for Dogs. Retrieved from [redrockbiologics.com](http://redrockbiologics.com):  
[www.redrockbiologics.com/rattlesnake\\_vaccine\\_faq.php](http://www.redrockbiologics.com/rattlesnake_vaccine_faq.php)

**Instructions for storage and use:** Keep refrigerated at 35-45F. Do not freeze the vaccine. Shake well before using. Each dose is 1cc, given subcutaneously, off the midline. This product is intended for use in healthy dogs only, at least 4 months old, as an aid in the reduction of morbidity and mortality due to intoxication with *Crotalus Atrox* venom. Administration should be by or under the supervision of a licensed veterinarian only. The expiration date is two years from date of manufacture.

**Initially, two doses are recommended, spaced one month apart, administered in different locations (do not "stack" vaccine doses); the majority of our studies in dogs used the side of the neck as the vaccination site. Typically, protection from boosters last about 6 months. Dogs should get at least one booster per year approximately one month before the beginning of rattlesnake exposure. Dogs exposed to rattlesnakes longer than about 6 months, or dogs at higher risk, should get a booster every 6 months. Dogs over 100 Lbs or under 25 Lbs should get an additional booster shot 30 days after the second booster shot in the initial vaccination sequence (three injections total) and then booster normally.**



**YOUR BUSINESS INSURANCE SOLUTION  
SPECTRUM® PROPOSAL**

**Prepared for:**

Laurel Rhodes DVM dba  
Livingston Aloha Mobile  
117 S Main St Apt B2  
Livingston, MT 59047

**Reference Number:**

83SBM1872BD - 003

**Proposal Date:**

02/27/2018, 2:58 PM

**Proposed by:**

HUB INTL MIDWEST LTD/AVMA/PLIT  
55 East Jackson Blvd Ste 14a  
Chicago, IL 60604



**Proposal Created by:**

Darren Spitzer  
312-279-4745  
[darren.spitzer@hubinternational.com](mailto:darren.spitzer@hubinternational.com)

**Total Estimated Annual Premium for Spectrum:**

**\$ 458.00**

**POLICY LEVEL**

**Page**

[Liability Coverage](#)..... [2](#)

**Important Messages:**

This document is a proposal of insurance for the applicant indicated above. It is not to be used as proof of coverage, unless bound by an authorized agent.

**WHY THE HARTFORD**

**200 years experience | 1 million customers | Named One of the World's Most Ethical Companies**  
*The Hartford is the market leader for small business with more than 200 years of experience, trusted by over 1 million customers and [rated 4.8 out of 5 by Small Businesses.](#)*

***Spectrum Proposal***  
***with***  
***Twin City Fire Insurance Company***  
***A member company of The Hartford***  
***3/17/2018 - 3/17/2019***

**Policy Level**

<b><u>Liability Coverage</u></b>	<b><u>Limits of Insurance</u></b>	<b><u>Premium</u></b>
Business Liability:		
Broad Form Named Insured includes subsidiaries in which greater than 50% of voting stock is owned by the Named Insured	\$     Included	\$     Included
CyberFlex	\$     Included	\$     Included
Defense Costs outside of the Limits of Insurance	\$     Included	\$     Included
Employees and Volunteers included as Insureds	\$     Included	\$     Included
Incidental Malpractice	\$     Included	\$     Included
Mental Anguish resulting from bodily injury, sickness or disease	\$     Included	\$     Included
Newly Acquired Organizations	\$     180 days	\$     Included
Non-Owned watercraft under 51 feet	\$     Included	\$     Included
Per Location General Aggregate - owned or rented premises	\$     Included	\$     Included
Personal and Advertising Liability	\$     Included	\$     Included
Property Damage to borrowed equipment not being used to perform operations at the job site	\$     Included	\$     Included
Unintentional failure to disclose hazards	\$     Included	\$     Included
Additional Insured - Coverage is automatically extended to persons or organizations whose written contracts or permits with the insured require insurance to be provided	\$     Included	\$     Included
Each Occurrence	\$     2,000,000	
General Aggregate	\$     4,000,000	\$            97
Products/Completed Operations Aggregate	\$     4,000,000	\$     Included
Personal and Advertising Injury	\$     2,000,000	\$     Included
Damage to Premises Rented to You	\$     1,000,000	\$     Included
Medical Expenses	\$            10,000	\$     Included
Hired and Non-owned Auto	\$     2,000,000	\$            183
Employment Practices Liability (Claims Made)		
Per Claim	\$            10,000	\$     Included
Aggregate	\$            10,000	\$     Included
EPLI Deductible	\$                    0	
EPLI Retroactive Date: 3/17/2018		
Policy Base Premium		\$            169
Terrorism	\$     Included	\$                9

**Location/Building Level**

**Location/Building Information**

Location No./Building No.     :     001/001  
Street Address                   :     117 S Main St Apt B2  
City, State and Zip Code       :     Livingston, MT 59047-2660

**Backup material for agenda item:**

- B. DISCUSS/APPROVE/DENY - MOU with AFSCME regarding seasonal employees





**Memorandum of Understanding  
By and Between  
City of Livingston and AFSCME 2711A**

The purpose of this Memorandum of Understanding (MOU) between the City of Livingston and AFSCME 2711A is to clarify the terms and agreement between the parties as it pertains to the proposed wage structure for seasonal employees who are members of the Union.

In recognition of the value and dedication that returning seasonal employees bring to the organization and to further enhance retention and recruiting efforts the City of Livingston and AFSCME 2711A agree to the following:

1. The term of this MOU will align with the term of the current contract and may be renegotiated by either party prior to that expiration date if it is found that this wage schedule is not having the desired outcome.
2. Wages for Seasonal Staff will be a set hourly rate for the duration of their tenure as a Seasonal Employee in each calendar year and will be based on the number of completed previous seasons. Credit for prior years completed will be applied when determining rate for current season.
3. The wage structure will be as follows
  - a. First Year \$13.00 per hour
  - b. Second Year \$13.50 per hour
  - c. Third and all Subsequent Years \$14.00 per hour
4. Seasonal staff will remain eligible for cert pay as per contract guidelines so long as they continue to maintain the certification.

The City of Livingston is willing to accommodate this request provided it is agreed to by the AFSCME union leadership. A copy of this MOU shall be retained and attached to the current Collective Bargaining Agreement.

\_\_\_\_\_  
Michael Kardoes, City Manager

  
\_\_\_\_\_  
Mike Frederick, 2711A President

  
\_\_\_\_\_  
Shannon Holmes, Director of Public Works

  
\_\_\_\_\_  
Judy Roy, 2711A Secretary

**Backup material for agenda item:**

- C. DISCUSS/APPROVE/DENY - MOU with AFSCME regarding summer schedule



**Memorandum of Understanding**  
**By and Between**  
**City of Livingston and AFSCME 2711A**


The purpose of this Memorandum of Understanding (MOU) between the City of Livingston and AFSCME 2711A is to clarify the terms and agreement between the parties as it pertains to the proposed alternative work schedule for the Street Department within Public Works.


Effective April 30<sup>th</sup> 2018 and lasting through September 28<sup>th</sup>, 2018, the Street Department within Public Works has requested to work the following modified schedule: Monday through Thursday, 7:00 am through 5:00pm with two 15 minute breaks and one 15 minute meal break. The Meal break will be compensated time since the Street Department crew will remain at their place of work while eating.

The City of Livingston is willing to accommodate this request provided it is agreed to by the AFSCME union leadership. Additionally, it is agreed by all parties that the 10 hour day constitutes a normal work day and that provisions in the CBA concerning time above 8 hours being considered overtime (paid at time and a half) are waived for the time period of the alternative work schedule. For purposes of this modified schedule any hours above 10 hour in a shift would be considered overtime and paid at time and a half. All other provisions regarding holidays, call backs etc. remain in place.

A copy of this MOU shall be retained and attached to the current Collective Bargaining Agreement.

\_\_\_\_\_  
Michael Kardoes, City Manager

  
\_\_\_\_\_  
Mike Frederick, 2711A President

  
\_\_\_\_\_  
Shannon Holmes, Director of Public Works

  
\_\_\_\_\_  
Judy Roy, 2711A Secretary

**Backup material for agenda item:**

- D. DISCUSS/APPROVE/DENY - Letter of Support regarding proposed BLM project

March 6, 2018

To: BLM Butte Field Office, BLM Billings Head Quarters, Interior Secretary Ryan Zinke, and Governor Steve Bullock

**RE: Livingston City Manager and City Commission Comments on BLM's March 13, 2018 Park County Oil and Gas Lease Sale**

The Livingston City Manager and City Commission respectfully submit this letter to the BLM Butte Field Office, BLM Headquarters Office, Interior Secretary Ryan Zinke's office, and Governor Steve Bullock's office to express our concern and opposition to the upcoming March 13, 2018 oil and gas lease sale of 4,307 acres in Park County. Parcels MTM 108952-FT, MTM 108952-FU, MTM 108952-F4 and MTM 108952-FR are located directly across from downtown Livingston within the iconic view sheds of Livingston Peak and Sheep Mountain and are also alarmingly close to the Yellowstone River, the life source of our community (see attached map). We have serious concerns about the damaging effects that oil and gas development could have on our local and regional economy, natural resources, public health and safety, and our community's essential identity as the "Gateway to Yellowstone National Park". We believe there are some very real and significant impacts that will result from leasing these lands and the subsequent oil and gas development that go beyond the analysis that the BLM has conducted. We ask that you carefully consider our concerns described below and withdraw the Park County parcels from the March 13, 2018 lease sale and all future lease sales.

**We are concerned that the BLM's decision to lease the Park County parcels for oil and gas exploration and development will have far-reaching negative impacts on our local economy and the character of our community.** Livingston is known for its thriving downtown business district, the Yellowstone River, and iconic views of Livingston Peak and surrounding mountain ranges. Some of the most successful contributors to our diverse economy include agricultural businesses, outdoor recreation, tourism as well as the many small businesses that support these economic drivers. These business sectors depend on clean water, clean air and careful stewardship of our land and public resources. We fear that oil and gas development near Livingston, especially directly across the river within the City's most prominent view shed will hurt these businesses and our local economy. There will be visual impacts, noise impacts, odor impacts, environmental impacts and irreparable damage to Livingston's reputation as the Gateway to Yellowstone National Park. What will be the economic toll on Livingston from the stigma of becoming an oil and gas town? Perhaps these leases will only result in a couple of wells that are hardly noticeable from town, but we don't know that – areas like the Bakken started with just a couple of wells and we major concerns that these leases will set a precedent for additional future development. We have a lot of fear about how oil and gas development on the most prominent view point of our town will have on our community and Park County at large.

**The City is also greatly concerned about the volatility and negative social impacts that the oil and gas industry could bring to our local community.** We know the oil and gas industry is a powerful, aggressive and very mobile industry. We also know the oil and gas industry is an especially volatile industry, with wide and varied swings between boom and bust periods. While the oil and gas development may be attractive for areas with struggling local economies, we believe it could significantly undermine the stability of our diverse economy. We have grave concerns that if the leases in Park County show any hint of promising development, our City and County will be quickly overwhelmed by aggressive development. We can see how the oil and gas boom has affected our

**Commented [JB1]:** Commission: you might consider adding a sentence in this opening paragraph that clarifies that the commission isn't saying all O&G development is bad, but that it isn't right for Park County and Livingston, MT.

**Commented [JB2]:** Commission: This might be a good section to tie Livingston's economic concerns with the County. I would guess that they are fairly interconnected (the County benefits from the City's prosperity and vice versa). A connection with the County might give the City some traction on commenting about the BLM's actions in the County... On the other hand, I can also understand if the City wants to be careful of giving the impression it is speaking for the County.

**Commented [JB3]:** Commission: you could include the August 2016 Yellowstone fish-kill as an example of how Livingston businesses lost hundreds of thousands of dollars in just a few weeks while the river was shut down.

You could also mention local tax-payer investments into the multi-million-dollar hospital and the newly renovated high school that sit directly across from the leases.

neighbors in eastern Montana and North Dakota. While their local economies benefited from short-term gains, the character and infrastructure of these small towns suffered significantly. Crime rates increased, drug use increased, housing shortages ensued, city and county government services were stretched thin and were woefully understaffed to handle the demands of the burgeoning oil and gas onslaught. State agencies that approved environmental permits were also overwhelmed. When the oil and gas market crashed in 2008/2009 many of the local communities that had become dependent on the strength and weakness of the oil and gas market were devastated. State budgets were hit hard as well. This not only hurt local business, but also significantly hurt City and County budgets that were faced with the challenge of supporting essential community services while maintaining the expanded infrastructure that was built-up to support the oil and gas industry.

We are not willing to expose our City and local community to these hardships. To be clear, the City is not against the oil and gas industry, it is an essential part of our everyday lives, but it is not in the best interest for our City to be exposed to the economic volatility the oil and gas industry imposes. We place great value in our diverse and stable economy - it is what allows us to plan for *sustainable* growth and provide *predictable* services for our community. Oil and gas development is in direct conflict with our strong economic sectors like agriculture, hunting/fishing, outdoor recreation, and supporting local businesses that rely on the responsible management and conservation of our natural resources.

**We have significant concerns about the impact oil and gas development could have on the Yellowstone River and Livingston's local groundwater resources.** As stated in the September 2017 Environmental Assessment for the Park County leases: *"Oil and gas exploration/development could contaminate aquifers with salts, drilling fluids, fluids and gases from other formations, detergents, solvents, hydrocarbons, metals, and nutrients; change vertical and horizontal aquifer permeability; and increase hydrologic communication with adjacent aquifers (EPA 2004). Groundwater removal could result in a depletion of flow in nearby streams and springs if the aquifer is hydraulically connected to such features"* (DOI-BLM-MT-L002-2017-0003-EA, pg. 34). The BLM also identified two Source Water Protection Regions (including the City of Livingston's primary drinking water source), multiple groundwater wells and the Yellowstone River all within very close proximity to these parcels. However, the EA seems to marginalize the potential risk of contaminating and depleting the groundwater and surface water resources that our City depends on by stating: *"These potential effects would be analyzed at the time of a receipt of an Application for a Permit to Drill. In the event of exploration or development, site-specific mitigation measures would be identified to avoid or minimize potential impacts to water resources prior to land disturbance."* This is repeated in the BLM's Finding of No Significant Impacts statement. We are alarmed that the BLM's analysis assumes that these major risk factors would be addressed during the Application for a Permit to Drill (APD) process, especially given the lack of data on the subsurface geology in our area. Presently, there is a lack of data clearly identifying where the mineral formations are located relative to known or potential underground sources of drinking water, including the aquifer that serves Livingston. It is unclear whether these mineral bearing formations are hydrologically connected to our drinking water sources, and important surface waters like the Yellowstone River. It is also unclear how pumping, fracking or other development techniques will affect the water quality and quantity in these resources. Likewise, it is unknown how injection disposal wells could impact local water resources. Livingston cannot accept the potential risk that BLM is placing on our critical water resources by authorizing these leases without a thorough understanding of how the ensuing exploration and development activities will affect them.

**Commented [JB4]:** You could mention in this section that Livingston has been dealing with the long-term impacts of groundwater contamination from the BNSF Superfund site which has forced several homes and business to be abandoned in the southeast portion of town. It is not in the City's best interest to allow uninformed activities that could create another source of industrial groundwater contamination to occur near our local drinking water sources.

This would also be a good section to cite the last two or three oil spills that have dumped oil into the Yellowstone River in eastern Montana in the last several years. Didn't one of the more recent spills contaminate the City of Glendive's primary drinking water supply?

**The City is also concerned about potential risks to Livingston's air quality due to potential venting or flaring activities, off gassing from produced waters, and exhausts from heavy equipment and generators.** Emissions of concern include methane, carbon monoxide, carbon dioxide, hydrogen sulfide, benzene, nitrogen oxides, and other gases that create noxious odors and respiratory problems. Livingston often experiences odor problems from our waste water treatment plant when we get a light wind out of the east, and emissions from oil and gas wells to the east and south of town could exacerbate the issue. The potential for respiratory and noxious odor impacts is particularly concerning for the Livingston schools and new the hospital located immediately downwind of the proposed lease areas. The BLM assessment states these issues would be addressed during the APD process, but again, we are concerned about whether these risks can be mitigated with informed decisions if there is a lack of information about the subsurface geology and reservoir fluids/gases in our area.

**The proposed Park County leases collectively represent a fraction of the available federal minerals within the BLM Butte Field Office region, yet the detrimental impacts of exploration/development activities would be disproportionately large on the unique and thriving community of Livingston.** As stated in the BLM Finding of No Significant Impact statement, the 4,307 acres that make up the Park County leases represent less than one percent of the available federal minerals in the BLM Butte Field Office boundary. This is an insignificant amount of land relative to the available BLM lands that are more appropriate for development, yet the negative impacts of opening this small area to oil and gas development would be far-reaching for our community. This type of development is not appropriate for our area and not the best use of the public resource. It will have a disproportionate impact on our economy, our natural resources, and the quality of life that draws people to work, play and live here.

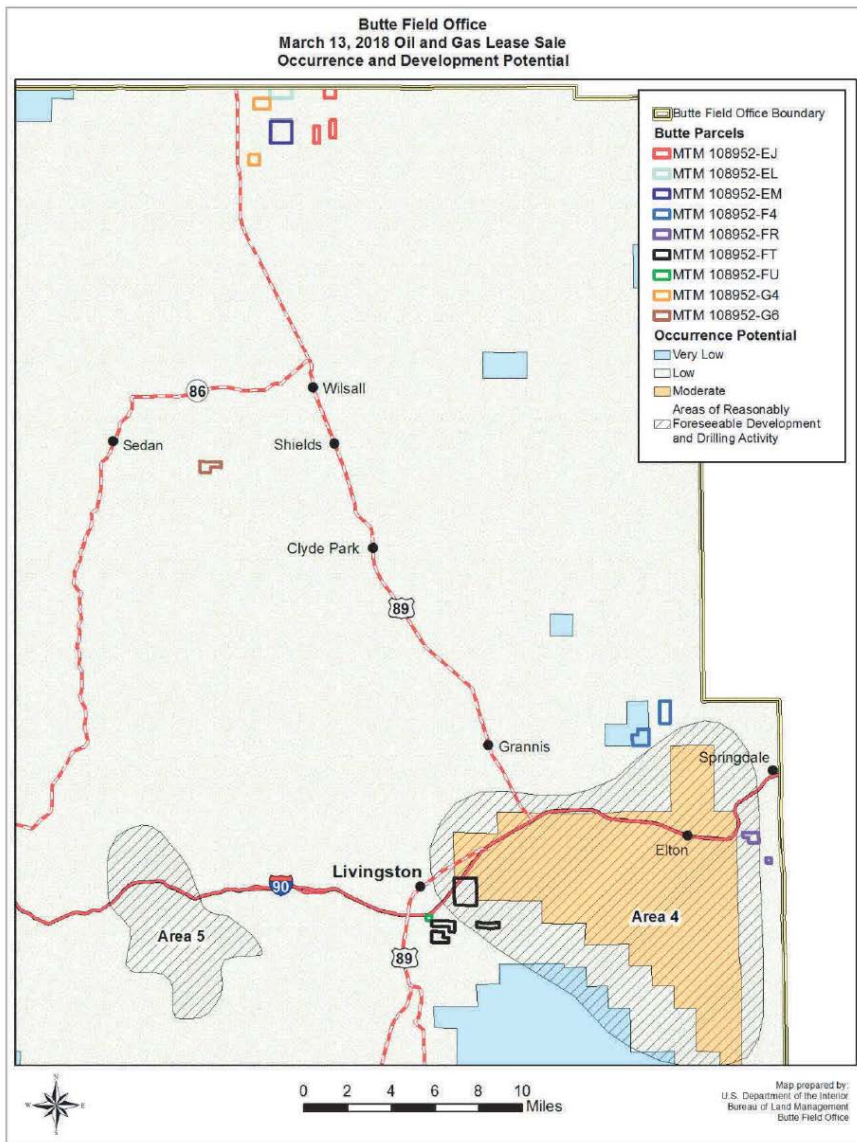
On behalf of the concerned citizens of Livingston, and the many concerned individuals across our State and our Nation that treasure this beautiful and prosperous corner of Montana, the Livingston City Manager and City Commission respectfully ask the BLM to withdraw the Park County BLM parcels from the March 13, 2018 lease sale and from future lease sales. Thank you for your thoughtful consideration of our concerns.

Sincerely,

Livingston City Manager and City Commission

Attachments: Park County March 13, 2018 Oil and Gas Lease Sale Map

Figure 1: Development Potential for the proposed nine lease parcels





**Other resources for the Commission:**

Fossil Fuel Extraction in Western Economies, April 2011. [https://headwaterseconomics.org/wp-content/uploads/Fossilfuel\\_West\\_Report.pdf](https://headwaterseconomics.org/wp-content/uploads/Fossilfuel_West_Report.pdf)

Montana Oil Tax Policy: No Long-Term Savings, Exposure to Volatility <https://headwaterseconomics.org/energy/best-practices/state-energy-policies-mt/>

A Profile of Socioeconomic Measures for Park County, MT from Know Your Economy Tool for Every Community (select Park County on interactive map) <https://headwaterseconomics.org/economic-development/trends-performance/know-your-economy/>

BLM Park County Lease Environmental Assessment <https://eplanning.blm.gov/epl-front-office/projects/nepa/87528/121793/148654/Butte2018OilandGasLeaseSaleEA.9.29.17.pdf>

BLM Park County Lease FONSI Statement [https://eplanning.blm.gov/epl-front-office/projects/nepa/87528/127753/155449/Butte\\_Unsigned\\_FONSI\\_March\\_13\\_2018\\_Oil\\_and\\_Gas\\_Lease\\_Sale.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/87528/127753/155449/Butte_Unsigned_FONSI_March_13_2018_Oil_and_Gas_Lease_Sale.pdf)

City of Livingston Public Water System Source Water Delineation And Assessment Report <http://deq.mt.gov/Portals/112/Water/WPB/NRISReports/MT0000573.pdf>